

POLICY

Environmental and Social Policy

[21 January 2019]

(draft for public consultation)

The draft environmental and social policy is open for public consultation until 6 March 2019. During the consultation, we will be seeking the views of EBRD shareholders, donors, clients, CSOs, industry and business organisations, trade unions, other Multilateral Development Banks and International Financial Institutions, other EBRD stakeholders, and the public in general on the draft policy. Public comments will be responded to, and summarised in the “Report on the invitation to the public to comment” that will be presented to the EBRD Board of Directors together with the final draft of the policy in Q2 of 2019.

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Environmental and Social Policy

Section I: Purpose

The European Bank for Reconstruction and Development (EBRD or the Bank) is committed to promoting “environmentally sound and sustainable development” in the full range of its activities pursuant to the Agreement Establishing the EBRD.¹ This document:

- Outlines how the Bank will assess and monitor the environmental and social risks and impacts of its projects;
- Sets minimum requirements for managing environmental and social impacts and risks caused by EBRD financed projects throughout the lifetime of the projects; and
- Defines the respective roles and responsibilities of both EBRD and its clients in designing, implementing and operating projects in accordance with this Policy.

This document supersedes EBRD Environmental and Social Policy (2014) and the respective Performance Requirements.

Section II: Definitions

Terms used in this Policy have the following meanings:

"project"	the set of works, goods, services and/or business activities defined in the financing agreements and for which EBRD financing is sought by a client, and approved by EBRD Board of Directors or, if the Board of Directors has delegated the approval authority, by Bank management.
"associated facilities"	facilities or activities that are not funded by EBRD as part of the project and, in the judgement of the Bank, are: (a) directly and significantly related to the project; (b) carried out, or planned to be carried out, contemporaneously with the project; and (c) necessary for the project to be viable and would not have been constructed, expanded or conducted if the project did not exist. For facilities or activities to be associated facilities, they must meet all three criteria.

Section III: Scope

1. EBRD’s role and responsibilities

- 1.1. EBRD’s responsibilities are consistent with its role as an international financial institution providing financing for projects approved by EBRD. With respect to any particular investment or technical co-operation project, the level of EBRD’s engagement is determined by the nature and scope of the project, availability of donor funding, as well as the specific circumstances of the collaboration and relationship with the client.
- 1.2. EBRD may refrain from financing a project on environmental or social grounds. There are several types of activities that EBRD does not finance in accordance with the EBRD Environmental and Social Exclusion List, included as Appendix 1 to this Policy.
- 1.3. EBRD administers a number of donor funds. Projects or activities financed in whole or in part with donor funds will comply with this Policy. Additional donor requirements relating

¹ Article 2.1(vii) of the Agreement Establishing the European Bank for Reconstruction and Development.

to environmental or social matters may apply to projects financed with donor funds as agreed between EBRD and donors.

2. EBRD's commitments

- 2.1. All projects financed by EBRD shall be structured to meet the requirements of this Policy.
- 2.2. As a signatory to the European Principles for the Environment,² EBRD is committed to ensuring that projects are structured to meet EU environmental principles, practices and substantive standards³, where these can be applied at the project level, regardless of their geographic location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent.
- 2.3. The EBRD will not knowingly finance projects that would contravene national laws or country obligations under relevant international treaties and agreements, as identified during project appraisal.
- 2.4. The EBRD is committed to the respect for human rights in projects financed by EBRD. EBRD will require clients, in their business activities, to respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts caused by the business activities of clients. EBRD will continuously improve the operations it finances in accordance with good international practice and will seek to progressively strengthen processes to identify human rights risks during the appraisal process of projects.
- 2.5. EBRD expects its clients to identify any potential gender specific and disproportionate adverse impacts and develop mitigation measures to reduce these. EBRD will require its clients to adopt measures to effectively prevent and address any form of violence, harassment, including sexual harassment, exploitation and abuse, gender-based violence, bullying, intimidation, and/or exploitation.
- 2.6. EBRD will expect its clients to identify vulnerable people or groups⁴ who may be disproportionately impacted by projects. This will include assessing to what extent tariff changes caused by projects may create problems of affordability of basic levels of services for disadvantaged and/or vulnerable groups of the population and satisfy itself that effective schemes to mitigate the affordability challenges are developed and put in place.
- 2.7. EBRD will support its clients in implementing no/low-carbon and climate change mitigation investments, as well as in identifying opportunities to reduce greenhouse gas emissions in projects. EBRD will also support its clients in developing climate adaptation measures and climate resilient investments as well as in managing risks caused by climate change.

² The European Principles for the Environment (EPE) were adopted by the Council of Europe Development Bank, EBRD, European Investment Bank, Nordic Environment Finance Corporation and Nordic Investment Bank. The EPE is an initiative launched in response to the drive for increased harmonisation of environmental principles, practices and standards associated with the financing of projects. The EPE commitments are reflected in PRs 1, 3, 4 and 10.

³ Substantive environmental standards of the EU are comprised in EU secondary legislation, *e.g.*, regulations, and directives. Procedural norms directed at Member States and EU institutions and the jurisprudence of the European Court of Justice and the Court of First Instance which applies to Member States, EU institutions and EU legal and natural persons, is excluded from this definition.

⁴ For the purpose of this Policy, vulnerable groups refers to people who, by virtue of gender, gender identity, sexual orientation, religion, ethnicity, indigenous status, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others. Vulnerable individuals and/or groups may also include, but not be limited to, people living below the poverty line, the landless, the elderly, women and children headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national legislation and/or public international law.

- 2.8. EBRD is committed to protecting and conserving biodiversity in projects financed by EBRD. EBRD will expect its clients to design and implement projects with the aim of achieving no net loss of biodiversity as well as to sustainably manage and use living natural resources.
- 2.9. EBRD will build partnerships with clients to assist them in adding value to their activities, improve long-term sustainability and strengthen their environmental and social management capacity. EBRD will work together with other international financial institutions, the European Union, bilateral donors, UN agencies and other organisations in coordinating effective interventions to promote environmental and social sustainability at the regional or sectoral level in its countries of operations. When co-financing projects with multilateral development banks and bilateral development institutions, EBRD will cooperate with them in order to agree on a common approach for project assessment, appraisal, management of environmental risks and impacts, monitoring and reporting. A common approach may be acceptable to EBRD, provided that such an approach is materially consistent with this Policy. The Bank will expect clients to apply the common approach to the project.
- 2.10. EBRD's country strategies, sector strategies and policies will integrate consideration of potential environmental and social challenges and opportunities associated with the EBRD's envisaged activities.
- 2.11. Through its technical cooperation and policy dialogue, EBRD will seek opportunities to build capacity to consider and manage environmental and social risks, impacts and opportunities in its countries of operation. EBRD will facilitate development of an enabling environment for its clients to achieve environmentally and socially sustainable outcomes in their projects.

3. Environmental and Social Performance Requirements

- 3.1. EBRD has adopted a comprehensive set of specific Performance Requirements (PRs) for key areas of environmental and social sustainability that projects are expected to meet. Central to the PRs is the application of the mitigation hierarchy⁵ and good international practice (GIP)⁶.
- 3.2. The PRs are as follows:
 - PR 1 - Assessment and Management of Environmental and Social Risks and Impacts
 - PR 2 - Labour and Working Conditions
 - PR 3 - Resource Efficiency, Pollution Prevention and Control
 - PR 4 - Health, Safety and Security
 - PR 5 - Land Acquisition, Involuntary Resettlement and Economic Displacement
 - PR 6 - Biodiversity Conservation and Sustainable Management of Living Natural Resources
 - PR 7 - Indigenous Peoples
 - PR 8 - Cultural Heritage
 - PR 9 - Financial Intermediaries
 - PR 10 - Information Disclosure and Stakeholder Engagement

⁵ The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate, and as a last resort, offset and/or compensate any potential residual adverse impacts.

⁶ Good international practice refers to the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances.

PRs 1 to 8 and 10 include the requirements for direct investment projects. PR 2, PR 9 and the occupational health and safety requirements of PR 4 include the requirements for financial intermediaries (FI) projects. Each PR includes specific requirements for EBRD clients in respect of projects financed by EBRD. Compliance with relevant national law is an integral part of all PRs.

- 3.3. Projects involving new facilities or business activities will be designed to meet the PRs from the outset. If a project involves existing facilities or business activities that do not meet the PRs at the time of approval by the EBRD Board of Directors, or if the Board of Directors has delegated the approval authority, by Bank management, or where the project does not meet the PRs from the outset, the client will be required to adopt an environmental and social action plan (ESAP), which will include a series of technically and financially feasible and cost-effective measures to achieve compliance of these facilities or activities with the PRs within a time frame acceptable to EBRD. In the ESAP, EBRD and the client will agree the specific corrective and preventive actions, mitigation measures and implementation time frame, which the client undertakes to implement to manage the environmental and social risks and impacts of the project in accordance with the PRs. The ESAP will form part of the financing agreements and include, as necessary, obligations of the client to support the implementation of the ESAP.
- 3.4. Associated facilities will be considered during project appraisal. To the extent that clients control or have influence over such associated facilities, clients will be expected to manage potential environmental and social risks and impacts associated with associated facilities in accordance with applicable law and GIP. The PRs do not apply to associated facilities.
- 3.5. EBRD seeks to ensure that the projects it finances achieve outcomes consistent with the PRs even if the outcomes are dependent upon the performance of third parties⁷. When the third party risk is high and the client has control or influence over the actions and behaviour of the third party, EBRD will require the client to collaborate with the third party to achieve outcomes consistent with the PRs. Specific requirements and actions will be determined on a case by case basis. Certain third party risks may result in the Bank deciding to refrain from financing the project.

4. Integrating environmental and social considerations into projects

Categorisation

*Direct Investments*⁸

- 4.1. EBRD categorises each project to determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required. This will be commensurate with the nature, location, sensitivity and scale of the project, and the significance of its potential adverse environmental and social impacts which are new and additional.
- 4.2. A project is categorised A when it could result in potentially significant adverse environmental and/or social impacts which are new and additional and, at the time of categorisation, cannot readily be identified or assessed. Projects categorised as A require a

⁷ A third party may be, inter alia, a government agency, a contractor, a supplier with whom the project/client has a substantial involvement, or an operator of an associated facility or service.

⁸ EBRD projects are divided into “direct investment projects” and “financial intermediaries (FI) projects”. In the case of FI Projects, the direct client is a financial services provider, an investment fund or other similar entity. All other projects are referred to as direct investment projects.

formalised and participatory environmental and social impact assessment process. A list of indicative Category A projects is presented in Appendix 2 to this Policy.

- 4.3. A project is categorised B when its potential adverse environmental and/or social impacts are typically site-specific, and/or readily identified and addressed through mitigation measures. The scope of environmental and social appraisal will be determined by EBRD on a case-by-case basis.
- 4.4. A project is categorised C when it is likely to have minimal or no potential adverse environmental and/or social impacts, which are readily addressed through environmental and social mitigation measures.
- 4.5. Initial environmental and social examinations (IESEs) will be carried out where insufficient information is available at the time of categorisation to determine the appropriate category and scope of appraisal.

Financial Intermediaries

- 4.6. A project will be categorised as “FI” if the financing structure involves the provision of funds through FIs.

Overall Approach to Project Appraisal

- 4.7. All projects undergo environmental and social appraisal both to help EBRD decide if the project should be financed and, if so, the way in which environmental and social risks and impacts should be addressed in planning, implementing and operating a project. Whilst the exact scope of the appraisal will be determined on a case by case basis, it will be appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts. The appraisal will assess the environmental and social risks and impacts of the project and the capacity and commitment of the client to implement the project in accordance with the relevant PRs. When a project involves existing facilities or business activities, and/or associated facilities, the appraisal will consider the environmental and social risks and impacts associated with such facilities and activities.
- 4.8. It is the responsibility of the client to ensure that adequate information is provided so that the Bank can undertake an environmental and social appraisal in accordance with this Policy. The Bank’s role is to: (i) review the client’s information; (ii) to provide guidance to assist the client in developing appropriate measures consistent with the mitigation hierarchy to address environmental and social impacts to meet the relevant PRs and (iii) to help identify opportunities for additional environmental or social benefits.
- 4.9. In cases that the Bank’s investment is not directed at specific project or physical assets, such as working capital finance and some types of equity investments, or will lead to future investments, the proposed use of proceeds and the environmental and social footprint are largely indeterminate at the time of EBRD’s decision to invest. The Bank will therefore (i) assess the investment based on the risks and impacts inherent to the particular sector and the context of the business activity, and (ii) assess the client’s capacity and commitment to manage the environmental and social risks and impacts in accordance with the relevant PRs.
- 4.10. Where the project involves general corporate finance, working capital or equity financing for a multi-site company, and where the use of proceeds is not directed at specific physical assets, the client will be required to align its corporate environmental and social management systems with the PRs and develop measures at the corporate level to manage the environmental and social risks associated with its business activity.

- 4.11. [In capital market transactions⁹, the disclosure of environmental and social documentation prior to subscription is subject to applicable capital market rules and regulations that prevent trading in listed securities on the basis of material non-public information and principles related to the equal treatment of investors. Due to the nature of capital market transactions, the Bank's environmental and social appraisal will be risk based, and will rely solely on publicly available information to assess the client's capacity and commitment to manage the environmental and social risks associated with its business activities in accordance with relevant national laws and GIP. Given these constraints, the PRs do not apply to capital market transactions.]¹⁰
- 4.12. When EBRD is approached to finance a project that is under construction, or where the project has received its permits from the host country, including the approval of local environmental and social impact assessments, the Bank's appraisal will include a gap analysis of the project design and implementation against the PRs to identify whether any additional studies and/or mitigation measures are required to meet EBRD's requirements.
- 4.13. EBRD's appraisal requires clients to identify stakeholders potentially affected by and/or interested in projects, disclose sufficient information about the risks and impacts arising from projects and engage with stakeholders in a meaningful and culturally appropriate manner. In particular, EBRD requires its clients to engage with people affected by projects and relevant stakeholders, in proportion to the potential impacts associated with the project and the level of stakeholder interest. For projects subject to ESIA that have the potential to have significant environmental impacts, such stakeholder engagement will be carried out bearing in mind the spirit and principles of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For projects that have the potential to have significant environmental impacts across international boundaries, the Bank will encourage the approach of the UNECE Convention on Environmental Impact Assessment in a Transboundary Context, regardless of geographical location of a project. The Bank may, in some cases, conduct its own public consultation activities to gauge stakeholder views.
- 4.14. For FI projects, EBRD will conduct due diligence on the FI and its portfolio to assess: (i) the FI's existing environmental and social policies and procedures and its capacity to implement them; (ii) environmental and social risks and impacts associated with the FI's existing portfolio and expected future projects; and (iii) measures necessary to strengthen the FI's existing environmental and social management system.

Decision-making

- 4.15. The documentation submitted to EBRD's Board of Directors, or if the Board of Directors has delegated the approval authority to Bank management, for approval of a project will include a description of the environmental and social appraisal, substantive risks and impacts, mitigation measures, a summary of stakeholder engagement, and information on how project risks and impacts are being or will be addressed by clients. The Board of Directors or management, as appropriate, will take the comments and concerns of stakeholders into account in its decision-making process as part of assessing the overall benefits and risks of the project.
- 4.16. EBRD's Board of Directors may agree, as a condition to EBRD financing, that certain elements of environmental and social appraisal take place following Board approval and

⁹ Capital market transactions refer to transactions in publicly traded securities such as listed bonds and shares or transactions in securities that are not publicly traded but remain subject to restrictions on trading in those securities on the basis of material non-public information.

¹⁰ [Note to draft: Text under discussion]

after the signing of the financing agreements. The Board will consider the overall impacts, risks and benefits of the proposed approach. Where a project has been approved subject to such conditions, the Project Summary Document will include a description of the approach.

Monitoring

- 4.17. EBRD will monitor and evaluate the projects it finances against the objectives of this Policy through the life of the project. The extent of monitoring will be commensurate with the environmental and social risks associated with the project. EBRD reviews annual environmental and social reports on the environmental and social performance of the project, implementation of the ESAP and the compliance of the client with the environmental and social covenants in the financing agreements. If the client fails to comply with its social and environmental commitments, as set out in the financing agreements, EBRD may agree with the client remedial measures to be taken by the client to achieve compliance. In the event that the client fails to comply with the agreed remedial measures, the Bank may take such action and/or exercise such rights and/or remedies contained in the financing agreements that it deems appropriate. EBRD may also periodically verify the monitoring information prepared by clients through site visits to projects by the Bank's environmental and social specialists and/or independent experts. In cases where legal proceedings are pending with the client, the Bank's ability to monitor may be restricted.

Operation Changes

- 4.18. Changes can occur in the nature and scope of the project following EBRD's approval and signing of the financing agreements. Such changes may have significant environmental or social implications associated with them. When such material changes are envisaged, the Bank will carry out an environmental and social appraisal of the relevant changes in accordance with this Policy and any additional appraisal and stakeholder engagement requirements, and environmental and social mitigation measures will be incorporated into the modified/restructured project documentation. Where operational changes will result in a materially different environmental and/or social scenario to the one approved by the Board, the change will be reported to senior management and, if appropriate, consistent with applicable EBRD policies, submitted to the Board for information or approval.

5. EBRD public reporting and accountability

- 5.1. EBRD is committed to the principles of transparency, accountability and stakeholder engagement. It will publish an annual sustainability report that provides information on the environmental and social aspects of its investment activities and its own operations, and on the implementation of this Policy. EBRD will engage in meaningful dialogue with the relevant Bank's stakeholders, in accordance with the EBRD Access to Information Policy (AIP). The Bank will promote similar good practices amongst its clients.
- 5.2. EBRD will summarise environmental and social risks and impacts relating to projects in Project Summary Documents in accordance with the provisions of the Bank's AIP.¹¹
- 5.3. EBRD accountability mechanism, the Independent Project Accountability Mechanism gives individuals, organisations and groups that perceive harm from a Bank project, a means of raising complaints and seek assistance with problem solving independently from banking operations. It can also be used by individuals or groups to file a complaint if they believe that the Bank has not complied with this Policy or project-specific components of the AIP.

¹¹ PSDs will be available from EBRD's Publications Desk and on the EBRD website (www.ebrd.com.)

6. Institutional and implementation arrangements

- 6.1. In order to ensure that the strategic directions described above are sufficiently addressed, EBRD will allocate responsibilities and appropriate resources to effective implementation of this Policy. The Bank will maintain adequate staff resources to oversee the environmental and social appraisal and monitoring processes and to initiate and develop environmentally and socially beneficial projects.
- 6.2. EBRD will develop and maintain environmental and social procedures and appropriate guidance notes and tools to assist in implementing this Policy, and will ensure that staff receives appropriate training on the requirements of this Policy.
- 6.3. EBRD will continue to be assisted by its Environmental and Social Advisory Council whose views will be sought on general policy-related issues and on sector policies and strategies prior to their finalisation. Its views may also be sought on specific issues related to the EBRD's projects and activities.

7. Annexes

The contents of Annexes 1 to 10 are part of this Section III.

Section IV: Waivers, Exceptions and Disclosure

Waivers

The Board of Directors may grant a deviation from a requirement of this Policy that is not explicitly permitted by the terms of this Policy.

Exceptions

This Policy does not apply to advisory services, community initiative projects, policy dialogue and technical cooperation, financed and/or implemented by the EBRD, or governance, administration and decision-making processes of the EBRD.

Disclosure

This Policy shall be disclosed on the Bank's website promptly following its approval by the Board of Directors.

Section V: Transitional Provisions

Projects receiving initial approval by Bank management¹² prior to the entry into force of this Policy will be subject to the policy in force at the time of the initial approval of the project.

Section VI: Effective Date

This Policy becomes effective on 1 January 2020.

Section VII: Decision Making Framework

Vice President Risk and Compliance is accountable for this Policy.

¹² At the time of adoption of this Policy, for direct and FI investment, this initial approval is referred to as "Concept Review".

Managing Director Environment and Sustainability Department is responsible for this Policy.

Section VIII: Review and Reporting

Review

The Policy shall be subject to review, with a public consultation process, in 2024.

The Board of Directors may approve revisions to the Policy at any stage without need for public consultations where revisions are non-substantive in nature or arise as a result of changes to another Bank policy which has been the subject of public consultations.

Reporting

Not Applicable.

Section IX: Related Documents

Draft Access to Information Policy (2019) POL/[●]/[●]

Draft Project Accountability Policy (2019) POL/[●]/[●] and Draft Independent Project Accountability Mechanism: Guidance (2019)

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Appendix 1: EBRD Environmental and Social Exclusion List

EBRD will not knowingly finance, directly or indirectly, projects involving the following:

- (a) the production of or trade in any product or activity deemed illegal under host country (i.e. national) laws or regulations, or international conventions and agreements, or subject to international phase out or bans, such as:
 - (i) Production of or trade in products containing PCBs.¹³
 - (ii) Production of or trade in pharmaceuticals, pesticides/herbicides and other hazardous substances subject to international phase-outs or bans.¹⁴
 - (iii) Production of or trade in ozone depleting substances subject to international phase out.¹⁵
 - (iv) Trade in wildlife or production of or trade in wildlife products regulated under CITES.¹⁶
 - (v) Transboundary movements of waste prohibited under public international law.¹⁷
- (b) Forced evictions.¹⁸
- (c) Production or use of or trade in unbonded asbestos fibres or asbestos-containing products.
- (d) Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage.
- (e) Drift net fishing in the marine environment using nets in excess of 2.5 km. in length.
- (f) Shipment of oil or other hazardous substances in tankers which do not comply with IMO requirements.¹⁹
- (g) Trade in goods without required export or import licenses or other evidence of authorization of transit from the relevant countries of export, import and, if applicable, transit.

¹³ PCBs: Polychlorinated biphenyls are a group of highly toxic chemicals. PCBs are likely to be found in oil-filled electrical transformers, capacitors and switchgear dating from 1950-1985.

¹⁴ Reference documents are Council Regulation (EEC) No 2455/92 of 23 July 1992 Concerning the Export and Import of Certain Dangerous Chemicals, as amended from time to time; United Nations Consolidated List of Products whose Consumption and/or Sale have been Banned, Withdrawn, Severely Restricted or not Approved by Governments; Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention); Stockholm Convention on Persistent Organic Pollutants; World Health Organisation Recommended Classification of Pesticides by Hazard.

¹⁵ Ozone Depleting Substances (ODSs): Chemical compounds which react with and deplete stratospheric ozone, resulting in the widely publicised 'ozone holes'. The Montreal Protocol on Substances that Deplete the Ozone Layer lists ODSs and their target reduction and phase out dates. A list of the chemical compounds regulated by the Montreal Protocol, which includes aerosols, refrigerants, foam blowing agents, solvents, and fire protection agents, together with details of signatory countries and phase out target dates, is available from the United Nations Environment Programme.

¹⁶ CITES: The Convention on International Trade in Endangered Species of Wild Fauna and Flora. A list of CITES listed species is available from the CITES secretariat.

¹⁷ Reference documents are: Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste; Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

¹⁸ Acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection. It does not refer to evictions carried out both in accordance with the law and in conformity with the provisions of relevant international conventions on human rights.

¹⁹ International Convention for the Safety of Life at Sea (SOLAS) certificates (including, without limitation International Safety Management Code compliance), tankers blacklisted by the European Union or banned by the Paris Memorandum of Understanding on Port State Control (Paris MOU) and tankers due for phase out under MARPOL regulation 13G.No single hull tanker over 25 years old should be used.

Appendix 2: Category A Projects

This list applies to “greenfield” or major extension or transformation-conversion projects in the categories listed below. The indicative types of projects listed below are examples of projects that could result in potentially significant adverse environmental and/or social impacts that are additional and new and therefore require an environmental and social impact assessment. The categorisation of each project will depend on the nature and significance of any actual or potential adverse environmental or social impacts that are additional and new, as determined by the specifics of nature, location, sensitivity and scale of the project.

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. Thermal power stations and other combustion installations with a heat output of 300 megawatts²⁰ or more and nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. Installations designed for the production or enrichment of nuclear fuels, the reprocessing, storage or final disposal of irradiated nuclear fuels, or for the storage, disposal or processing of radioactive waste.
4. Integrated works for the initial smelting of cast-iron and steel; installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are for the production of: basic organic chemicals; basic inorganic chemicals; phosphorous, nitrogen or potassium-based fertilisers (simple or compound fertilisers); basic plant health products and biocides; basic pharmaceutical products using a chemical or biological process; explosives.
6. Construction of motorways, express roads and lines for long-distance railway traffic; airports with a basic runway length of 2,100 metres or more; new roads of four or more lanes, or realignment and/or widening of existing roads to provide four or more lanes, where such new roads, or realigned and/or widened sections of road would be 10 km or more in a continuous length.
7. Pipelines, terminals and associated facilities for the large-scale transport of gas, oil and chemicals.
8. Large scale sea ports and also inland waterways and ports for inland-waterway traffic; trading ports, piers for loading and unloading connected to land, and outside ports (excluding ferry piers).
9. Waste-processing and disposal installations for the incineration, chemical treatment or landfill of hazardous, toxic or dangerous wastes.
10. Large scale waste disposal installations for the incineration or chemical treatment of non-hazardous wastes.
11. Large²¹ dams and other impoundments designed for the holding back or permanent storage of water.

²⁰ Equivalent to a gross electrical output of 140 MW for steam and single cycle gas turbines power stations.

²¹ The International Commission on Large Dams (ICOLD) defines a large dam as a dam with a height of 15 metres or more from the foundation. Dams that are between 5 and 15 metres high and have a reservoir volume of more than 3 million cubic metres are also classified as large dams.

12. Groundwater abstraction activities or artificial groundwater recharge schemes in cases where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.
13. Industrial plants for the: (a) production of pulp from timber or similar fibrous materials; (b) production of paper and board with a production capacity exceeding 200 air-dried metric tonnes per day.
14. Large-scale peat extraction, quarries and open-cast mining, and processing of metal ores or coal.
15. Extraction of petroleum and natural gas for commercial purposes.
16. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tonnes or more.
17. Large-scale logging or deforestation of large areas.
18. Municipal waste-water treatment plants with a capacity exceeding 150,000 population equivalent.
19. Large-scale municipal solid waste-processing and disposal facilities.
20. Large-scale tourism and retail development.
21. Construction of high voltage overhead electrical power lines.
22. Large scale wind power installations for energy production (wind farms).
23. Large-scale land reclamation and sea dredging operations.
24. Large-scale primary agriculture or forestation involving intensification, land use change or conversion of priority biodiversity features and/or critical habitats.
25. Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.
26. Installations for the intensive rearing of poultry or pigs with more than: (a) 85 000 places for broilers, 60 000 places for hens; (b) 3 000 places for production pigs (over 30 kg); or (c) 900 places for sows.
27. Projects²² which are planned to be carried out or are likely to have a perceptible impact on sensitive locations of international, national or regional importance, even if the project category does not appear in this list. Such sensitive locations include, *inter alia*, nature protected areas designated by national or public international law, critical habitat or other ecosystems which support priority biodiversity features, areas of archaeological or cultural significance, and areas of importance for indigenous peoples or other vulnerable groups.
28. Projects which may result in significant adverse social impacts to local communities or other project affected parties.
29. Projects which may involve significant involuntary resettlement or economic displacement.

²² Including, without limitation, environmentally or socially oriented projects (such as renewables).

EBRD Performance Requirement 1:

Assessment and Management of Environmental and Social Risks and Impacts

Introduction

1. This Performance Requirement (PR) recognises the importance of an integrated assessment to identify the environmental and social risks and impacts²³ associated with projects and the client's management of environmental and social performance throughout the life of the project. A successful and efficient environmental and social management system (ESMS) promotes sound and sustainable environmental and social performance, and can lead to improved financial, environmental and social outcomes. It is a dynamic, continuous process, initiated and supported by management, and involves meaningful communication between the client, its workers, the local communities affected by the project and, where appropriate, other stakeholders.
2. This PR outlines the responsibilities of the client in the process of assessing the potential environmental and social risks and impacts associated with the project, and developing and implementing procedures for managing and monitoring these risks and impacts.

Objectives

3. The objectives of this PR are to:
 - identify and assess environmental and social risks and impacts of the project;
 - adopt a mitigation hierarchy²⁴ approach to address adverse environmental or social risks and impacts from project activities on workers, affected communities, and the environment;
 - develop an ESMS commensurate to the environmental and social risks and impacts of the project in a manner consistent with the relevant PRs; and
 - promote continuous improvement of clients' environmental and social performance through the effective use of management systems.

Scope of Application

4. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project design, construction, operations, and decommissioning or closure and reinstatement.
5. Projects involving new facilities or business activities will be designed to meet the PRs from the outset. If a project involves existing facilities or business activities that do not meet the PRs at the time of approval by the EBRD Board of Directors, or if the Board of Directors has delegated the approval authority, by Bank management, or where the project does not meet the PRs from the outset, the client will be required to adopt an environmental and social action plan (ESAP), which will include a series of technically and financially feasible and cost-effective measures to achieve compliance of these facilities or activities with the PRs within a time frame acceptable to EBRD. In the ESAP, EBRD and the client will agree the specific corrective and preventive actions, mitigation measures and implementation time frame, which the client undertakes to implement to manage the environmental and social risks and impacts of the project in accordance with the PRs. The ESAP

²³ For the purposes of this PR, social impact refers to the impacts on individuals, community and workers, resulting from the business activity to be supported and the way in which their working conditions, socio-economic status, cultural identity, human rights and/or health may be affected.

²⁴ The mitigation hierarchy comprises measures taken to avoid creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would minimise, mitigate, and as last resort offset and/or compensate any potential residual adverse impacts.

will form part of the financing agreements and include, as necessary, obligations of the client to support the implementation of the ESAP.

6. Associated facilities will be considered during project appraisal. To the extent that the client controls or has influence over such associated facilities, the client will be expected to manage potential environmental and social risks and impacts associated with associated facilities in accordance with applicable law and good international practice (GIP)²⁵. Where potentially significant environmental and/or social risks relating to third party facilities or activities are identified, the client will collaborate with those relevant third parties to manage and mitigate these risks.
7. Engagement with the project stakeholders is an integral part of this process. Requirements regarding stakeholder engagement are outlined in PR 10.

Requirements

Environmental and Social Assessment

8. The client's environmental and social assessment will consider the environmental and social risks and impacts associated with the project. When a project involves existing facilities or business activities, and/or associated facilities, the client's environmental and social assessment will consider the environmental and social risks and impacts associated with such facilities and activities. The environmental and social assessment process will be based on current and/or recent information, and environmental and social baseline data, including gender disaggregated data, at an appropriate level of detail. The assessment process will also identify: (i) applicable environmental and social laws and regulatory requirements of the jurisdictions in which the project operates, including those laws implementing host country obligations under public international law; and (ii) applicable requirements under the PRs. Central to this approach is the application of the mitigation hierarchy and GIP.
9. The environmental and social assessment process will also identify and characterise, to the extent appropriate, cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments as well as unplanned but predictable activities enabled by the project that may occur later or at a different location.
10. For projects that could have adverse environmental and social impacts, the client will, as an integral part of the assessment process, identify the project's stakeholders and design a plan for engaging with the stakeholders in a meaningful manner to take their views and concerns into consideration in planning, implementing and operating the project in accordance with PR10. This stakeholder identification process shall include a 'vulnerability assessment' to identify any people who may be disproportionately impacted by the project.
11. The assessment process will be commensurate with and proportional to the potential risks and impacts of the project and will cover, in an integrated way, all relevant direct and indirect environmental and social risks and impacts of the project, and the relevant stages of the project cycle. Gender aspects shall be considered throughout the assessment process. It may be appropriate for the client to complement its environmental and social assessment with further studies focusing on specific risks and impacts, such as climate change and human rights. The assessment will also identify and assess potential improvement opportunities.

²⁵ Good international practice refers to the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances.

12. For projects that are complex or contentious, or that involve potentially significant multidimensional environmental or social risks or impacts, the client may be required to engage one or more internationally recognised independent experts. Such experts may, depending on the project, form part of an advisory panel or be otherwise employed by the client, and will provide independent advice and oversight to the project.
13. A project is categorised A when it could result in potentially significant adverse environmental and/or social impacts which are new and additional and, at the time of categorisation, cannot readily be identified or assessed. Projects categorised as A require a formalised and participatory environmental and social impact assessment (ESIA) process. The ESIA shall include an analysis of technically and financially feasible alternatives, including project location and design, mitigation options and the “without project” scenario. A list of indicative Category A projects is presented in Appendix 2 to the Policy.
14. A project is categorised B when its potential adverse environmental and/or social impacts are typically site-specific, and/or readily identified and addressed through mitigation measures. The scope of environmental and social appraisal will be determined by EBRD on a case-by-case basis.
15. A project is categorised C when it is likely to have minimal or no potential adverse environmental and/or social impacts, and, if so, these are readily addressed through environmental and social mitigation measures.
16. In cases where a client with multi-site operations are seeking general corporate finance or equity financing, the assessment outlined in paragraphs 8 to 15 may not be appropriate. In such cases, the client’s current environmental and social management system and past and current performance will be assessed by the Bank against the applicable PRs and an ESAP will be developed to manage environmental and social risk and impacts, and implemented at the corporate level. Site-specific actions may be considered.

Environmental and Social Management Systems

17. The client is required to establish and maintain an ESMS appropriate to the nature and scale of the project and commensurate with the level of its environmental and social risks and impacts in accordance with GIP. The objective of such a management system is to integrate the implementation of environmental and social requirements into a streamlined and coordinated process, and to embed it in the main operational activities of the client.

Environmental and Social Policy

16. The client will establish, as appropriate, an overarching policy defining the environmental and social objectives and principles that enable the project to achieve sound environmental and social performance. The policy will provide a framework for the environmental and social assessment and management process consistent with the principles of the PRs.

Environmental and Social Management Plan

17. Taking into account the findings of the environmental and social assessment process and the outcomes of stakeholder engagement, the client will develop and implement a programme of actions to address the identified project’s environmental and social risks and impacts and other performance improvement measures to meet the PRs. Depending on the project, the programme may consist of a combination of documented operational policies, management systems, procedures, plans, practices and capital investments, collectively known as environmental and social management plans (ESMP).
18. The ESMP will reflect the mitigation hierarchy and, where technically and financially feasible, favour the avoidance and prevention of impacts over minimisation, mitigation or compensation,

and ensure that all relevant stages of the project are structured to meet applicable laws and regulatory requirements and the PRs.

19. Where affected individuals or groups are identified as disadvantaged or vulnerable²⁶ during the appraisal process, the ESMP will include differentiated measures so that adverse impacts do not fall disproportionately on them and they are able to take advantage of opportunities to benefit from the project.
20. The level of detail and complexity of the ESMP will be commensurate with the project's risks and impacts as well as any opportunities for project improvement. The ESMP will define outcomes measurable to the extent possible with targets and performance indicators that can be tracked over defined time periods. Recognising the dynamic nature of the project development and implementation process, the ESMP will be responsive to changes in project circumstances, unforeseen events, regulatory changes and the results of monitoring and review. The ESMP will be updated from time to time.

Organisational Capacity and Commitment

21. The client will establish, maintain, and strengthen, as necessary, an organisational structure that defines roles, responsibilities, and authority to implement the ESMS for ensuring on-going compliance with relevant national laws and regulatory requirements, and the PRs. The client will designate specific personnel, including management representative(s), with clear lines of responsibility and authority to maintain and implement the ESMS. Key environmental and social responsibilities will be defined and communicated to the relevant personnel. The client will provide adequate support and human and financial resources on an on-going basis to achieve effective and continuous environmental and social performance.
22. The client will ensure that employees with direct responsibility for activities relevant to the environmental and social performance of the project are suitably qualified and trained.

Third Party Risk

23. The ESMS, including any specific requirements and actions it sets out, will apply to the project regardless of whether it is carried out directly by the client or through third parties.
24. It is the client's responsibility to ensure that contractors working on project sites meet the ESMS requirements by adopting and implementing an appropriate contractor management system. Effective contractor management includes:
 - assessing environmental and social risks associated with contracted works and services and incorporating relevant ESMP conditions into tender documents as appropriate, contractually requiring contractors to apply these standards and provide for mitigation and/or remedies in case of non-compliance;
 - overseeing that contractors have the knowledge and skills to perform their project tasks in accordance with contractual environmental and social conditions;
 - monitoring contractor compliance with contractual environmental and social conditions; and
 - in the case of sub-contracting, requiring contractors to have similar environmental and social arrangements with their subcontractors.

²⁶ Vulnerable groups refers to people who, by virtue of gender, gender identity, sexual orientation, religion, ethnicity, indigenous status, age, disability, economic disadvantage or social status may be more adversely affected by project impacts than others. Vulnerable individuals and/or groups may also include, but not be limited to, people living below the poverty line, the landless, the elderly, women and children headed households, refugees, internally displaced people, ethnic minorities, natural resource dependent communities or other displaced persons who may not be protected through national legislation and /or public international law.

25. A client is required to make reasonable efforts to identify risks associated with its primary supply chains. Any measures and/or mitigants identified during due diligence are to be included, where appropriate, in the ESMP. Where the client can reasonably exercise control over its primary suppliers, the environmental and social assessment process will also consider whether the primary supply chains central to the project's core operational functions are likely to be associated with environmental and social risks and impacts. If this is the case, the client will adopt and implement a supply chain management system commensurate to the complexity of these supply chains and associated environmental and social risks and impacts appropriate for the nature and scale of the project. The management system will include processes for taking action to address environmental and social risks and impacts identified during the supply chain assessment or ongoing monitoring, taking into account: (a) whether the client caused or contributed to the issues; (b) the client's leverage over the supplier; (c) how crucial the relationship is to the client; (d) the severity of the issues, and; (e) whether terminating the relationship with the supplier would have adverse consequences. Requirements for labour standards in the supply chain are outlined in PR2; requirements for supply chains for living natural resources are defined in PR6.

Project Monitoring and Reporting

26. The client will monitor the environmental and social performance of the project. This monitoring is intended to: (i) determine whether the project is being implemented in accordance with the PRs, and (ii) learn lessons, allocate resources and identify opportunities for continuous improvement.
27. Monitoring requirements will be proportional to the nature of the project and its environmental and social risks and impacts. Monitoring will address:
- Any significant environmental and social risks and impacts identified during the environmental and social assessment process;
 - Relevant parts of the PRs as identified during project assessment process and subsequent monitoring;
 - Actions specified in the ESMP or ESAP;
 - Grievances received from workers and external stakeholders, and how they were resolved;
 - Any regulatory monitoring and reporting requirements; and
 - Any monitoring and reporting required by other parties (for example, off-takers, financiers; certification bodies).
28. The client will ensure that adequate systems, resources and personnel are in place to carry out monitoring. The client will review the results of monitoring and initiate corrective actions as necessary. In addition, the client may use third parties, such as independent experts, local communities or civil society organisations, to complement or verify its own monitoring information. Where relevant authorities or other third party have responsibility for managing specific environmental and social risks and impacts and associated mitigation measures, the client will collaborate with the relevant authorities or other third parties in establishing and monitoring such mitigation measures.
29. The client will provide regular reports to EBRD on the environmental and social performance of the project, including compliance with the PRs and implementation of the ESMS, ESMP, ESAP and stakeholder engagement plan where appropriate. Based on the monitoring results the client will identify and reflect any necessary corrective and preventive actions in an amended ESMP or ESAP, as agreed with EBRD. The client will implement agreed corrective and preventive actions, and follow up on these actions to enhance their performance.
30. The client must promptly notify EBRD of any environmental or social incident or accident relating to the client or the project which has, or is likely to have, a significant adverse effect.

31. The client must promptly notify EBRD of any changes to the project's scope, design or operation that is likely to materially change its environmental or social risks and impacts. The client will carry out any additional assessment and stakeholder engagement in accordance with the PRs and amend the ESMP or ESAP accordingly as agreed with EBRD.
32. For projects that could have significant adverse environmental and social risks and impacts, the client may be required to engage relevant external experts to perform periodic independent reviews of the project, or to carry out monitoring of specific environmental or social risks and impacts. The scope of this work and follow-up actions will be determined on case-by-case basis.

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EBRD Performance Requirement 2:

Labour and Working Conditions

Introduction

1. This Performance Requirement (PR) recognises that for clients and their business activities, the workforce is a valuable asset, and that good human resources management and a sound worker-management relationship based on respect for workers' rights, including freedom of association and right to collective bargaining, are key ingredients to the sustainability of business activities.

Objectives

2. The objectives of this PR are to:
 - respect and protect the fundamental principles and rights²⁷ of workers;
 - ensure fair treatment, non-discrimination, and equal opportunities of workers in accordance with the decent work agenda²⁸;
 - establish, maintain and improve a sound worker-management relationship;
 - ensure compliance with national labour and employment laws and any collective agreements to which the client is a party;
 - protect women and men at work, including vulnerable workers such as young workers, persons with disabilities, migrant workers and refugees, workers engaged by third parties, and workers in the client's supply chain; and
 - prevent the use of forced labour and child labour (as defined by the International Labour Organisation (ILO)) if it relates to project activities.

Scope of Application

3. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The scope of application of this PR will be established during the environmental and social assessment process and depends on the type of contractual relationship between the client and the project workers.
4. This PR establishes requirements for all project workers, including full-time, part-time, temporary, fixed-term, seasonal and migrant workers, whether engaged directly by the client or by a third party, and sets out specific requirements for primary supply chains. Project workers are those workers who work on a project site or perform work directly related to the core functions of a project.
5. The requirements of the PR applying to non-employee workers are set out in paragraphs 22-24 of this PR. Supply chain related labour requirements are addressed in paragraphs 25-27 of this PR.

²⁷ As guided by the ILO core Conventions:

C087 on Freedom of Association and Protection of the Right to Organise (1948)

C098 on the Right to Organise and Collective Bargaining (1949)

C029 on Forced Labour (1930) and its supplementing protocol P029 (2014)

C105 on the Abolition of Forced Labour (1957),

C100 on Equal Remuneration (1951)

C111 on Discrimination (Employment and Occupation) (1958) ,

C138 on Minimum Age (1973)

C182 on the Worst forms of Child Labour (1999)

²⁸Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

6. Occupational health and safety requirements are foreseen under PR 4.

Requirements

General

7. Projects are required to comply, at a minimum, with (i) national labour, employment and social security laws, and (ii) the fundamental principles and standards embodied in the ILO core conventions.

Management of Worker Relationships

Human Resources Policies

8. The client will adopt and/or maintain human resources policies and management systems or procedures appropriate to its size and workforce setting out its approach to managing the workforce in accordance with the requirements of this PR and national law. These policies and procedures will be understandable and accessible to workers, and in the main language(s) spoken by the workforce.

Working Relationships

9. The client will provide workers with written contracts describing the employment relationship with the client. The contract will set out their rights under national labour and employment law and any applicable collective agreements, working conditions and terms of employment (including their entitlement to wages, hours of work, overtime arrangements and overtime compensation), and any benefits (such as leave for illness, maternity/paternity, or holiday). Any material changes will be documented and communicated to the workers. This information will be understandable and accessible to workers, and available in the main language(s) spoken by the workforce. Human resources management systems will ensure up-to-date employment records are kept that respect the rights of workers to privacy and data protection.
10. Communications will be managed with a view to providing the workers with: (i) adequate information on changes that might affect them, in particular on anticipated changes associated with the project and (ii) the opportunity to provide comments as part of continuous improvement, including how to raise grievances as detailed in paragraph 21 of this PR.

Child Labour

11. The client will comply with all relevant national laws or international labour standards regarding employment of minors, whichever provide a higher degree of protection for the child.
12. The client will not employ children in a manner that is economically exploitative, or is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Young people below the age of 18 years will be identified by the client and will not be employed in hazardous work. All work of persons under the age of 18 shall be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.

Forced Labour

13. The client will not employ forced labour, which consists of work or service not voluntarily performed that is exacted from an individual under threat of force or penalty, including through abusive and fraudulent recruitment practices. This includes involuntary or compulsory labour, such

as indentured labour, involuntary prison labour, bonded labour or similar labour-contracting arrangements, or trafficking in persons²⁹.

Non-Discrimination and Equal Opportunity

14. Projects will comply with relevant requirements on non-discrimination related to employment. In particular, with reference to the project, the client will:

- not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements, such as gender, race, nationality, political opinion, affiliation to a union, ethnic, social or indigenous origin, religion or belief, marital or family status, disability, age, sexual orientation or gender identity;
- base the employment relationship on the principle of equal opportunities and fair treatment, and will not discriminate with respect to any aspect of the employment relationship, including recruitment and hiring, job assignment, compensation (including wages and benefits), working conditions and terms of employment, including reasonable adaptation of the workplace related to disabilities, access to training, promotion, termination of employment or retirement, and discipline;
- take measures to prevent and address any form of violence and harassment, bullying, intimidation, and/or exploitation, including any form of gender-based violence (GBV)³⁰.

The following measures will not be considered discrimination: special measures of protection or assistance to remedy past discriminatory actions; promote local employment opportunities; or selection for a particular job based on the inherent requirements of the job, which are in accordance with national law.

Workers' Organisations

15. The client will inform workers that they have the right to elect workers' representatives, form or join workers' organisations of their choosing and engage in collective bargaining, in accordance with national law. The client will not discriminate or retaliate against workers who act as representatives, participate, or seek to participate, in such organisations or in collective bargaining, and will not interfere in the formation or functioning of worker organisations. In accordance with national law, the client will engage with such workers' representatives or organisations and provide them with information needed for meaningful negotiation in a timely manner. Where national law substantially restricts the establishment or functioning of workers' organisations, the client will not restrict workers from developing alternative mechanisms to represent their interests and protect their rights regarding working conditions and terms of employment, appropriate to its size and workforce. The client will neither seek to influence nor control these mechanisms.

Wages, Benefits and Conditions of Work

16. Wages, benefits and conditions of work offered (including hours of work) will, overall, be at least comparable to those offered by equivalent employers in the relevant country/region and sector concerned. Overtime work will be voluntary and will be performed and compensated in accordance with national laws.

²⁹ Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

³⁰ "Violence and harassment" should be understood as a continuum of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, having the aim of causing physical, psycho-social, or economic harm, including GBV. GBV should be understood as umbrella term for acts of sexual harassment, sexual exploitation and abuse, directed at a person on the basis of their sex or gender, or that affects persons of a particular sex or gender disproportionately.

17. Where the client is a party to a collective bargaining agreement or is otherwise bound by it, such agreement will be respected. Where such agreements do not exist, or do not address working conditions and terms of employment, the client will provide reasonable working conditions and terms of employment.
18. The client will identify migrant workers and ensure that they are engaged on substantially equivalent terms and conditions to non-migrant workers carrying out the same work.

Worker Accommodation

19. Where a client provides accommodation for project workers, the client will put in place and implement policies governing the quality and management of the accommodation and provision of services. The accommodation services will be provided in accordance with GIP³¹ and in a manner consistent with the principles of non-discrimination and equal opportunity, including safeguards against sexual harassment and other forms of GBV.

Collective Dismissals

20. Prior to implementing any collective dismissals³² in connection with the project, the client will carry out an analysis of alternatives to the planned workforce reduction. If the analysis does not identify viable alternatives, the client will develop and implement a collective dismissals plan to assess, reduce and mitigate the adverse impacts of the workforce reduction on workers, in accordance with national law and GIP and based on the principles of non-discrimination and consultation. The selection process will be transparent, based on fair, objective, consistently applied criteria, and subject to an effective grievance mechanism. The client will comply with all legal and collectively-agreed requirements relating to collective dismissal, including notification of public authorities, and provision of information to, and consultation with, workers and their organisations. The final collective dismissals plan will reflect the outcomes of consultations with workers and their organisations. All outstanding back pay and social security benefits and pension contributions and benefits will be paid: (i) to the workers on or before termination of the working relationship; (ii) where appropriate, for the benefit of the workers; or (iii) in accordance with a timeline agreed through a collective agreement. The client will provide advance notification to the EBRD of the planned workforce reduction and, where requested by the EBRD, a copy of the proposed plan for collective dismissals.

Grievance Mechanism

21. The client will provide an effective grievance mechanism for workers (and their organisations, where they exist) to raise workplace concerns. The client will inform the workers of the grievance mechanism at the time of hiring, and make it easily accessible to them. The mechanism will involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution. The mechanism will include provisions for confidential complaints, and those requiring special protection measures such as reports of gender-based violence. The mechanism will not prevent access to other judicial or administrative remedies that might be available under law or through existing arbitration or mediation procedures, nor will it substitute for grievance mechanisms provided through workers' organisations or collective agreements.

³¹ EBRD/IFC Guidance Note "Workers' accommodation: processes and standards", 2009.

³² Collective dismissals cover all multiple dismissals that are a result of an economic, technical, or organizational reason; or other reasons that are not related to performance or other personal reasons.

Non-Employee Workers

22. For non-employee workers³³ to be engaged through contractors or other intermediaries, the client will use reasonable efforts prior to contracting to: (i) assess the past performance of these contractors or intermediaries with regard to employment and occupational health and safety, to establish their current capacity to implement the requirements of this PR and PR 4; and (ii) require that they apply the requirements stated in paragraphs 7-19 and 21 of this PR and paragraphs 11-15 of PR 4.
23. The client will identify risks associated with the engagement of project workers by third parties and establish commensurate policies and procedures for managing and monitoring the performance of third party employers in relation to the project and requirements of this PR. In addition, the client will use reasonable efforts to incorporate these requirements in contractual agreements with such third party employers and where relevant, will develop and implement a contractor management plan.
24. The client will ensure that non-employee workers have access to an effective grievance mechanism that meets the requirements of this PR. In cases where the third party is not able to provide a grievance mechanism, the client will provide an effective grievance mechanism to serve workers engaged by the third party.

Supply Chain

25. As part of the supply chain assessment process outlined in PR 1, the client will identify and assess the risk of child labour and forced labour³⁴ being used in its primary supply chains of goods and materials which are central to the core functions of the project³⁵.
26. If this risk assessment identifies that child labour or forced labour are present in the primary supply chain in contravention of ILO standards, or where significant risks of child labour or forced labour are reported in lower tiers of the core supply chain, the client will take appropriate steps to remedy this in accordance with the following requirements:
 - (i) If child labour is detected, good faith efforts will be made to remediate or mitigate the problem. The client will only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier is committed to implementing a programme in accordance with GIP to eliminate such practices within a reasonable time frame. The client will report on progress with the implementation of such programme on a regular basis;
 - (ii) In relation to forced labour, the client will only continue to procure such goods or materials from that supplier having received satisfactory undertakings or evidence that the supplier has taken appropriate steps to eliminate the conditions that constitute forced labour; and
 - (iii) Where there is a risk of child and/or forced labour, the client will monitor its primary supply chain on an ongoing basis in order to identify any significant changes in its supply chain and new risks or incidents of child and/or forced labour.

Additionally, where significant occupational health and safety risks are identified among primary supply chain workers, the client will introduce procedures and mitigation measures to ensure that relevant suppliers are taking steps to prevent these situations.

³³ 'Non-employee workers' are project workers who are not directly employed by the client, but rather engaged through contractors, agents, brokers or other intermediaries.

³⁴ As defined in ILO conventions 138, 182, 29, 105

³⁵ See PR1, paragraph x for the definition of primary supply chains.

27. The ability of the client to fully address these risks will depend upon the client's level of management control or influence over its primary suppliers. The client will reorient the affected primary supply chain over an agreed timeframe to suppliers that can demonstrate that they are complying with this PR.

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EBRD Performance Requirement 3:

Resource Efficiency and Pollution Prevention and Control

Introduction

1. This Performance Requirement (PR) outlines a project-level approach to resource management and pollution³⁶ prevention and control, building on the mitigation hierarchy, the principle that environmental damage should as a priority be rectified at its source, and the “polluter pays” principle. The project related risks and impacts associated with resource use, and the generation of waste and emissions need to be assessed in the context of project location and local environmental conditions. Appropriate mitigation measures, technologies and practices should be adopted for efficient and effective resource use, pollution prevention and control and avoidance and reduction of greenhouse gases (GHG) emissions.
2. This PR acknowledges the importance of using best available techniques and good international practice (GIP) to optimise resource use and efficiently prevent and control pollution.

Objectives

3. The objectives of this PR are to:
 - adopt the mitigation hierarchy approach to addressing adverse impacts on human health and the environment arising from the resource use and pollution released from the project;
 - minimise and manage project-related GHG emissions;
 - minimise and manage the risks and impacts associated with hazardous substances and materials, including pesticides; and
 - identify, where feasible, project-related opportunities for resource efficiency improvements.

Scope of Application

4. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed throughout the project life-cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client’s overall environmental and social management system (ESMS) and the project specific environmental and social management plan (ESMP).

Requirements

Resource Efficiency

5. The environmental and social assessment process will identify opportunities and alternatives for resource efficiency relating to the project in accordance with GIP. In doing so, the client will adopt technically and financially feasible³⁷ and cost effective³⁸ measures for minimising its consumption

³⁶ The term “pollution” refers to both hazardous and non-hazardous chemical pollutants in the solid, liquid, or gaseous phases, and includes other components such as thermal discharge to water, emissions of short- and long-lived climate pollutants, contamination of environmental media (including soil, air and water), nuisance odours, noise, vibration, radiation, electromagnetic energy and the creation of potential visual impacts, including light.

³⁷ Technical feasibility is based on whether the proposed measures and actions can be implemented with commercially available skills, equipment, and materials, taking into consideration prevailing local factors such as climate, geography, infrastructure, security, governance, capacity and operational reliability. Financial feasibility is based on commercial considerations, including relative magnitude of the incremental cost of adopting such measures and actions compared to the project’s investment, operating, and maintenance costs.

and improving efficiency in its use of energy, water and other resources and material inputs as well as for recovering and re-utilising waste materials in implementing the project. The key focus will be on activities that are considered the core functions of the project, similar opportunities in the client's other business activities that are not part of the project will also be considered. Where benchmarking data are available, the client's assessment will make a comparison of its operations with GIP to establish the relative level of efficiency.

6. The client will integrate resource efficiency measures and the principles of cleaner production into product design and production processes with the objective of conserving raw materials, energy and water and avoiding and reducing the generation of waste materials.

Water

7. All technically and financially feasible and cost effective opportunities for water minimisation, reuse and recycling in accordance with GIP will be identified and considered as part of the project design. Where a project specific water supply needs to be developed, the client will seek, where feasible, to utilise water for technical purposes that is not fit for human consumption.
8. For projects with a high water demand (exceeding 5,000 m³/day), the following will apply:
 - a detailed water balance will be developed during the assessment process and maintained and reported annually to EBRD;
 - specific water use (measured by volume of water used per unit production) will be assessed;
 - operations will be benchmarked to available industry standards and GIP of water use efficiency; and
 - opportunities for continuous improvement in terms of water use efficiency should be identified.
9. The client will consider the potential cumulative impacts of water abstraction upon third party users and local ecosystems. Where relevant, the client will assess the impacts of their activities on the water supply to third parties and will need to demonstrate that their proposed water supply will not have adverse impacts to the water resources crucial to third parties or to sensitive ecosystems. As part of the client's environmental and social assessment process, the client will identify and implement appropriate mitigation measures that favour the prevention or avoidance of risks and impacts over minimisation and reduction in accordance with the mitigation hierarchy approach and GIP.

Waste³⁹

10. The client will avoid or minimise the generation of waste materials and reduce their harmfulness as far as practicable. Where waste generation cannot be avoided but has been minimised, the client will reuse, recycle or recover waste, or use it as a source of energy in a manner that is safe for human health and the environment. Where waste cannot be recycled, reused or recovered, the client will need to appropriately treat and/or dispose of it in an environmentally sound and safe manner that includes the appropriate control of emissions and residues resulting from the handling and processing of the waste material, and where relevant, in accordance with EU substantive environmental standards.

³⁸ Cost-effectiveness is determined according to the capital and operational cost and financial benefits of the measure considered over the life of the project.

³⁹For the purposes of this PR, waste is defined as a heterogeneous mixture of gaseous, liquid and/or solid substances/materials which need to be treated using adequate physical, chemical and/or biological processes before it can be safely disposed of into the environment.

11. If the waste generated is considered hazardous by national and/or EU regulations, the client will consider the limitations applicable to transboundary movements of waste and other applicable legal requirements.
12. When waste disposal is transferred offsite and/or managed by third parties, the client will obtain chain of custody documentation to the final destination and will use contractors that are licensed by the relevant regulatory agencies. The client will maintain an appropriate duty of care with respect to waste management.

Pollution Prevention and Control

13. The client's environmental and social assessment process will determine the appropriate pollution prevention and control methods, technologies and practices ("techniques") to be applied to the project. The assessment will take into consideration the characteristics of the facilities and operations that are part of the project, the project's geographical location and local ambient environmental conditions. The assessment process will identify technically and financially feasible and cost effective pollution prevention and control techniques that are best suited to avoid or minimise adverse impacts on human health and the environment. The techniques applied to the project will favour the prevention or avoidance of risks and impacts over minimisation and reduction, in accordance with the mitigation hierarchy and consistent with GIP, and will be appropriate to the nature and scale of the project's adverse risks and impacts.
14. The client will structure the project to meet relevant EU substantive environmental standards, where these can be applied at the project level⁴⁰. Projects that, due to their nature and scale, would be subject to the EU Industrial Emissions Directive⁴¹, will be required to meet, regardless of location, EU Best Available Techniques (BAT) associated emissions levels as set out in EU BAT Conclusions.
15. Where no EU substantive environmental standards at project level exist, the client will identify, in agreement with EBRD, other appropriate environmental standards in accordance with GIP. In addition, projects will be designed to comply with applicable national law, and will be maintained and operated in accordance with national laws and other applicable regulatory requirements. When host country regulations differ from the levels and measures presented in EU substantive environmental standards or other appropriate environmental standards identified, projects will be expected to meet whichever is more stringent.
16. Projects are expected to meet EU substantive environmental standards or other agreed environmental standards, and national regulatory requirements from the outset. Where projects involve existing facilities and/or operations, these facilities and/or operations are expected to meet the requirements of paragraph 14 and/or 15 over a reasonable period of time, to be determined by a formal assessment of their performance against the applicable standards.
17. In respect of projects located in the EU member states and the EU Acceding, Candidate and potential Candidate Countries, which involve the rehabilitation of existing facilities and/or operations and where relevant EU substantive environmental standards have been identified, the timeframe to achieve compliance with these standards will take into account any nationally agreed timeframes. For projects in all other countries, the timeframe for achieving compliance with EU substantive environmental standards will take into account local conditions and the cost of

⁴⁰For the purpose of this PR, EU substantive environmental standards can be applied at the project level where the EU secondary legislative document itself contains clear quantitative or qualitative requirements that are applicable at the project level (as opposed to, e.g., ambient level).

⁴¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

application, and will be consistent with the European Neighbourhood Policy and any bilateral agreements or action plans agreed between the EU and the relevant host country.

18. Throughout the project lifecycle, the client will apply pollution prevention and control techniques consistent with the mitigation hierarchy to minimise potential adverse impacts on human health and the environment while remaining technically and financially feasible and cost effective. This applies to the release of pollutants due to routine, non-routine or accidental circumstances.

Greenhouse Gases

19. The client's environmental and social assessment process will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimise project-related GHG emissions during the design and operation of the project. These options may include, but are not limited to, alternative project locations, techniques or processes, adoption of renewable or low carbon energy sources, sustainable agricultural, forestry and livestock management practices, the reduction of fugitive emissions and the reduction of gas flaring.
20. For projects that either (1) have, or are expected to have, gross emissions in excess of 100,000 tonnes CO₂-equivalent annually, or (2) are expected to result in a net change in emissions, positive or negative, of more than 25,000 tonnes of CO₂-equivalent annually post-investment, the client will quantify these emissions in accordance with EBRD Protocol for Assessment of Greenhouse Gas Emissions. The scope of GHG assessment shall include all direct emissions from the facilities, activities and operations that are part of the project, as well as indirect emissions associated with the production of energy used by the project. Quantification of GHG emissions will be conducted by the client annually and reported to EBRD.

Safe Use and Management of Hazardous Substances and Materials

21. In all activities directly related to the project, the client will avoid or minimise the use of hazardous substances and materials, and consider the use of less hazardous substitutes for such substances and materials so as to protect human health and the environment from their potentially harmful impacts. Where avoidance or substitution is not feasible, the client will apply appropriate risk management measures in order to minimise or control the release of such substances/materials into air, water and/or land resulting from their production, transportation, handling, storage, use and disposal relating to project activities.
22. The client will avoid the manufacture, trade, and use of hazardous substances and materials subject to international bans or phase-outs due to their high toxicity to living organisms, environmental persistence, potential for bioaccumulation, or potential for depletion of the ozone layer.

Pesticide use and Management

23. Clients who manage or use pesticides will formulate and implement an integrated pest management (IPM) and/or integrated vector management (IVM) approach for pest management activities. The client's IPM and IVM programme will coordinate use of pest and environmental information together with available pest control methods, including cultural practices, biological, genetic and, as a last resort, chemical means to prevent unacceptable levels of pest damage. When pest management activities include the use of pesticides, the client will strive to reduce impacts of pesticides on biodiversity, human health and the broader environment and, more generally, to achieve a more sustainable use of pesticides as well as a significant overall reduction in the risks and uses of pesticides consistent with the necessary crop protection.
24. The sustainable use of pesticides will include:

- avoiding, and if not possible, minimising the impacts of pesticides on biodiversity, human health and the broader environment;
- reducing the levels of harmful active substances by replacing the most dangerous ones with safer (including non-chemical) alternatives;
- selecting pesticides that are low in toxicity, known to be effective against the target species, and have minimal effects on non-target species, such as pollinating insects and the environment;
- the promotion of low-input or pesticide free crop farming; and
- minimising damage to natural enemies of target pests and preventing the development of resistance in pests.

25. The client will handle, store, apply and dispose of pesticides in accordance with GIP.

DRAFT

EBRD Performance Requirement 4:

Health, Safety and Security

Introduction

1. This Performance Requirement (PR) recognises the importance of managing health and safety risks to workers, project-affected communities and consumers associated with project activities, in accordance with the hierarchy of risk control⁴². By providing workers with safe and healthy working conditions, clients may create tangible benefits, such as enhancement of the efficiency and productivity of their operations.
2. Project activities, equipment, and infrastructure may increase the potential for worker and community exposure to health and safety risks, including those associated with construction, operation, maintenance and decommissioning, transport of goods and services.
3. The client has the primary responsibility to provide safe and healthy conditions for their workers and informing, instructing, training, supervising and consulting workers on health and safety. Workers have the responsibility to cooperate actively with their employer and take care of their own health and safety and the health and safety of others.
4. While acknowledging the role of relevant authorities in protecting and promoting the health and safety of the public, the client has the duty to manage health, safety and security risks to affected communities that may arise from the project.

Objectives

5. The objectives of this PR are to:
 - protect and promote the health and safety of workers, by ensuring safe and healthy working conditions and implementing an occupational health and safety management system, appropriate to risks associated with the project; and
 - identify, assess, and manage health, safety and security risk to project-affected communities and consumers during the project life cycle from both routine and non-routine activities.

Scope of Application

6. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project life-cycle. The potential risks to the workers and affected communities may vary according to the stage of the project, including construction, commissioning, operation, maintenance and decommissioning or closure and reinstatement. The implementation of the actions necessary to meet the requirements of this PR is managed as an integral part of the client's overall environmental and social management system (ESMS) and/or the project specific environmental and social management plan (ESMP), as provided in PR1.
7. Detailed requirements for the prevention and control of risks to human health and the impacts to the environment due to the release of pollution are found in PR 3.

⁴² The hierarchy of risk control refers to: (i) elimination of the risk; (ii) reduction of the risk by substituting the hazardous condition or substance with a non or less hazardous substance; (iii) isolation of the risk to prevent exposure; (iv) introduction of engineering controls which protect the workforce and community collectively; and (v) provision of information, instruction and training to workers and communities, as appropriate, on risks, safe systems of work, emergency plans, reporting requirements and mandatory supervision.

Requirements

General Requirements for Health and Safety Management

8. The client will adopt measures to identify and prevent accidents, injury and ill-health to workers and affected communities arising from or associated with, or occurring in carrying out project activities and prepare and implement preventive and protective measures and plans to manage health and safety risks in accordance with the hierarchy of risk control and in accordance with good international practice (GIP)⁴³.
9. The client will provide workers and affected communities with relevant information, instruction and training relating to health and safety hazards, risks, protective and preventive measures and emergency arrangements that are necessary for their health and safety throughout the project.
10. Where any accidents, injury and ill-health occurs in the course of works associated with the project, or there is a potential of such event, the client will investigate, document, analyse the findings, adopt measures to prevent reoccurrence and, where required by law, notify and cooperate with the relevant authorities. The client will ensure appropriate financial compensation for any persons suffering injury or disease that is caused by project activities.

Occupational Health and Safety

11. The client will provide all workers with a safe and healthy workplace, taking into account inherent risks in its particular sector and specific classes of hazards that may be present. The client will identify the health and safety risks and protection measures appropriate to the stage, size and nature of the project in accordance with relevant substantive EU Occupational Health and Safety (OHS)⁴⁴ standards and GIP. The client will undertake an assessment commensurate to the level of risk and develop a project specific health safety plan, where appropriate, that will be integrated into the ESMS. The plan will be periodically reviewed to evaluate its effectiveness.
12. The client will plan and implement occupational health and safety arrangements following the hierarchy of risk control and provide personal protective equipment at no cost to the workers. The client will require its non-employee workers, contractors and other third parties engaged to work on project sites or perform work directly related to the core functions of the project to comply with the health and safety plan.
13. During the course of any work activity, the client will ensure that all workers are provided with continued and appropriate supervision to ensure safe use of work equipment and adequate implementation and enforcement of the health and safety procedures and rules.
14. The client will monitor the health and wellbeing of its workers and consult and encourage the workers to participate and stop work and report any unsafe acts and conditions in matters related to health and safety in the workplace. This will include, although not limited to, accident investigation, risk assessment, development of safe systems of work and the selection of work equipment.
15. Where there are specific risks associated with certain work activities that could result in adverse effects on the health, safety and wellbeing of workers with sensitivities such as age, gender, disability or short or long term health conditions, the client will carry out more detailed risk assessment and make adjustments to prevent injury and ill health.

⁴³ For example, ISO 45001 Occupational Health and Safety

⁴⁴ EU OHS standards mean substantive requirements in EU legislative requirements in the field of safety and health at work setting out minimum health and safety requirements for the protection of workers.

Community Health and Safety

16. The client will identify and assess project related risks and adverse impacts to the health, safety and security of the potentially affected communities and will develop protection, prevention and mitigation measures proportionate to the impacts and risks, and appropriate to the stage, size and nature of the project. The client will communicate with affected communities and other relevant stakeholders, as appropriate, on mitigation measures and plans. These measures will be consistent with the mitigation hierarchy risk and GIP.
17. Measures to avoid or mitigate community health and safety impacts of the project may be the responsibility of the relevant public authorities. Under these circumstances, the client will clarify its role and its responsibility to notify and cooperate with the relevant authorities.

Gender Based Violence

18. The client will assess project-related gender based violence risks of sexual harassment, sexual exploitation and abuse to project affected persons and communities. Where appropriate the client will adopt specific measures to prevent and address these risks, including the provision of confidential channels for reporting incidents and providing support.

Specific Requirements for Health and Safety Management

Infrastructure, Building, and Equipment Design and Safety

19. The client will incorporate health and safety considerations into the design, construction, commissioning, operation, maintenance and decommissioning of the structural elements or components of the project in accordance with GIP taking into consideration health and safety risks to third parties and affected communities. Structural elements will be designed and constructed by qualified and experienced professionals. Third-party life and fire safety audits will be undertaken for all new public buildings and their major refurbishment, prior to their commissioning or use.
20. The construction and major refurbishments of buildings used for communal purposes will be designed in accordance with the concept of universal access⁴⁵.
21. When structural elements or components, such as dams, tailings dams or ash ponds, are situated in high-risk locations and their failure or malfunction may threaten the health and safety of workers and communities, the client will engage one or more qualified experts with relevant and recognised experience in similar projects, separate from those responsible for the design and construction, to conduct a review as early as possible in project development and throughout the stages of project design, construction, operation, and commissioning.

Hazardous Materials Safety

22. The client will prevent or reduce the potential for worker and community exposure to hazardous materials⁴⁶ that may be released by the project by adopting the hierarchy of risk control. Where there is a potential for workers and the affected community to be exposed to hazards, the client will exercise due care to manage their exposure by eliminating, substituting or isolating the condition or substance causing the hazards.

⁴⁵ Universal access refers to free access for people of all ages and abilities in different situations and under various circumstances.

⁴⁶ Hazardous materials refer to substances which have one or more inherent hazardous properties which can result in a significant adverse effect to the environment or human health.

23. Where hazardous materials are part of existing facilities or operations associated with the project, the client will exercise due care when conducting commissioning and decommissioning activities in order to prevent exposure of the workers and the affected community to such hazardous materials. Where use of such materials cannot be avoided, the client will take the necessary measures for safe handling, storage and transport in accordance with GIP.
24. The client will take reasonable efforts to ensure the safe and secure transport of hazardous materials including wastes, and will implement measures to avoid or reduce community exposure.

Product Safety

25. Where the project involves production of and/or trade in consumer products, the client will ensure product safety through good design and manufacturing processes, as well as adequate storage, handling and transportation for the product distribution. GIP will be followed, including general safety requirements specific to the product safety standards and codes of practice in a given business sector and country.
26. During the project assessment process, the client will identify and evaluate health and safety risks to consumers associated with its products throughout their lifecycle'. The approach to product safety will adhere to the hierarchy of risk control and ensure adequate information on the product's health and safety risks is provided to consumers. For situations involving products which may pose serious health threats, the client will ensure product recall and product withdrawal policies and procedures are in place.

Services Safety

27. Where the project involves provision of services to communities, the client will ensure the safety and quality of such services and implement appropriate quality management systems to make sure that such services do not pose risks on workers or community health and safety.
28. Where the project involves the provision of public services, to the extent possible, the client will incorporate the principles of universal access.
29. Where the project involves the provision of health services and / or the use of antibiotics, the client will incorporate antimicrobial stewardship⁴⁷.

Traffic and Road Safety

30. The client will identify, evaluate and monitor the potential traffic and road safety risks to workers and potentially affected communities throughout the project life-cycle and, where appropriate, will develop measures and plans to address them. For projects that operate moving equipment on public roads and other forms of infrastructure, the client will seek to prevent the occurrence of incidents and injuries to members of the public associated with the operation of such equipment.
31. The client will take into consideration relevant EU road and traffic safety management standards⁴⁸, identify road safety measures for both motorised and non-motorised road users and incorporate technically and economically feasible and cost-effective road safety components into the project design to mitigate potential road safety impacts on the local affected communities. Where appropriate, the client will undertake a road safety audit for each phase of the project and routinely monitor incident and accident reports to identify and resolve problems or negative safety trends.

⁴⁷ Antimicrobial stewardship is a coordinated program that promotes the appropriate use of antimicrobials (including antibiotics), improves patient outcomes, reduces microbial resistance, and decreases the spread of infections caused by multidrug-resistant organisms.

⁴⁸ Consistent with the objectives of the Directive 2008/96/EC of the European Parliament and of the Council of 19 November 2008 on road infrastructure safety management.

For clients with vehicles or fleets of vehicles (owned or leased), the client will introduce GIP arrangements to manage road and traffic risks⁴⁹ and will provide appropriate training to workers on driver and vehicle safety. The client will ensure regular maintenance of all project vehicles.

Natural Hazards

32. The client will identify and assess the potential risks caused by natural hazards, such as earthquakes, landslides or floods as these relate to the project.
33. The client will avoid and/or minimise risks caused by natural hazards or land use changes to which the project activities may contribute.

Exposure to Disease

34. In order to help prevent or minimise the potential for workers and community exposure to diseases, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups, the client will develop appropriate mitigation in consultation with the relevant authorities. The client will take measures to avoid or minimise transmission of communicable diseases that may be associated with the influx of temporary and/or permanent project workers.
35. Where specific diseases are endemic in communities affected by the project, the client is encouraged to identify opportunities throughout the project life-cycle to improve conditions that could help reduce their incidence, both among the workers and communities. The client will take measures to avoid or minimise transmission of communicable diseases and prevent gender based risks that may be associated with the influx of temporary and/or permanent project labour.

Emergency Preparedness and Response

36. The client will be prepared to respond to incidents, accidents and emergency situations in a manner appropriate to the operational risks related to the project and the need to prevent or reduce their potential adverse impacts and in accordance with applicable regulatory requirements and GIP⁵⁰.
37. The client will identify and assess major-accident hazards, and will take all measures necessary to prevent major accidents or limit their risks on workers, affected communities and adverse impacts on the environment, with a view to ensuring high levels of protection to people and the environment in a consistent and effective manner. Such measures will be identified in a major-accident prevention/emergency preparedness policy and an appropriate management plan, integrated into the client's overall ESMS. This plan will include organisational structures, responsibilities, procedures, communication, training, resources and other aspects required to implement such policy to ensure the client has the capacity to respond effectively to emergencies associated with project hazards in accordance with GIP.
38. For projects where major-accident risk is present, the client will assist and cooperate with the relevant authorities and the project affected community in their preparations to respond effectively to emergency situations. If local authorities or responders have little or no capacity to respond effectively, the client will play an active role in preparing for and responding to emergencies associated with the project, and will provide adequate evidence to demonstrate capacity to respond to reasonably predictable incidents, either directly or indirectly.

⁴⁹ In accordance with good international practice such as ISO 39001 Road Traffic Safety Management

⁵⁰ As elaborated by Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (EU SEVESO III Directive).

Security

39. The client will identify and assess the security threats to its organisational assets and to the workers and communities. Where risks have been identified, adequate security management arrangements will be implemented in accordance with GIP to manage these risks.
40. When the client retains employees or contractors to provide security to safeguard its personnel and property, it will assess risks posed by these security arrangements to those within and outside the project site. In making such arrangements, the client will be guided by the principle of proportionality, GIP⁵¹, and applicable laws in terms of hiring, rules of conduct, training, equipping and monitoring the conduct of such personnel. The client will not sanction any use of force except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.
41. If security services are the responsibility of the relevant governmental authorities, the client will collaborate, to the extent permitted, with the responsible government authority to achieve outcomes that are consistent with this PR. The client will identify and assess potential risks arising from such use, communicate to the relevant public authorities its intent that the security personnel act in a manner consistent with paragraph 40 above, and encourage the relevant public authorities to disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.
42. The client will (i) make reasonable inquiries to verify that the employees or contracted workers retained by the client to provide security are not implicated in past abuses; (ii) train them adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct toward workers and affected communities; and (iii) require them to act within the applicable law and any requirements set out in all PRs.
43. The client will establish and maintain an effective grievance mechanism to allow the affected community and workers to express concerns about the security arrangements and actions of security personnel, and will inform communities and workers of the availability and use of the grievance mechanisms, in accordance with this PR and PR 10.
44. The client will investigate any allegations of unlawful or abusive acts of security personnel, take action (or urge appropriate parties to take action) to prevent recurrence, and where necessary report unlawful and abusive acts to public authorities.

⁵¹ For example, the *Voluntary Principles on Security and Human Rights*.

EBRD Performance Requirement 5:

Land Acquisition, Involuntary Resettlement and Economic Displacement

Introduction

1. This Performance Requirement (PR) addresses impacts of project-related land acquisition⁵², including restrictions on land use⁵³ and access to assets and natural resources⁵⁴, which may cause physical displacement (relocation, loss of residential land or shelter), and/or economic displacement (loss of land, assets or access to assets leading to loss of income sources or other means of livelihood⁵⁵). The term “involuntary resettlement” refers to both of these impacts. Resettlement is considered involuntary when affected persons or affected communities do not have the right to refuse land acquisition or restrictions on land use, even if compulsory acquisition is used only as a last resort after a negotiated process.
2. Application of this PR is consistent with the universal respect for, and observance of, human rights and freedoms⁵⁶, specifically the right to private property, to adequate housing⁵⁷ and the continuous improvement of living conditions.
3. Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons⁵⁸ and communities, as well as environmental damage and adverse socio-economic impacts in areas to which they have been displaced. The client shall consider feasible alternative project designs to avoid or minimize land acquisition or restrictions on land use while balancing environmental, social, and financial costs and benefits, and paying particular attention to gender impacts and impacts on vulnerable persons. Where it cannot be avoided through design, displacement shall be minimised and appropriate measures to mitigate adverse impacts on affected persons and host communities shall be carefully planned and implemented.

⁵² “*Land acquisition*” refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation of land and assets and acquisition of temporary or permanent access rights, such as easements, rights of way; establishment of restrictions of access to protected and other areas (such as loss of access to state-owned sub-surface mineral rights by artisanal miners; loss of access to marine fishing grounds due to project activities; and restriction of access to resources located within state-determined exclusion or sanitary protection zones not acquired by the client. Land acquisition may also include: (a) acquisition of unoccupied or unutilized land whether or not the landholder relies upon such land for income or livelihood purposes; (b) repossession of public land that is used or occupied by individuals or households; and (c) project impacts that result in land being submerged or otherwise rendered unusable or inaccessible. “Land” includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements, and appurtenant water bodies.

⁵³ “*Restrictions on land use*” refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly introduced and put into effect as part of the project. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, and restrictions on land use within utility easements or safety zones.

⁵⁴ “*Natural Resources*” include, but are not limited to, marine and aquatic resources such as fishing grounds, timber and non-timber forest products, medicinal plants, hunting and gathering grounds, natural meadows used for pasture, stone and sand deposits used locally for construction or other purposes.

⁵⁵ “*Livelihood*” refers to the full range of means that individuals, families and communities utilize to make a living, such as wages from employment; cash income earned through an enterprise or through sale of produce, goods, handicrafts or services; rental income from land or premises; income from a harvest or animal husbandry, or share of a harvest (such as various sharecropping arrangements) or livestock production; self-produced goods or produce used for exchange or barter; self-consumed goods or produce; food, materials, fuel and goods for personal or household use or trade derived from natural or common resources; pensions and various types of government allowances.

⁵⁶ Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

⁵⁷ “*Adequate Housing*” refers to adequate privacy; space; physical accessibility; security; security of tenure; structural stability and durability; lighting, heating and ventilation; basic infrastructure, such as water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors; adequate and accessible location with regard to work and basic facilities.

⁵⁸ “*Affected person*” refers to a person or enterprise experiencing either physical or economic displacement as a result of project related land acquisition, loss of, or restriction to assets or natural resources.

Objectives

4. The objectives of this PR are to:
 - avoid or, when unavoidable, minimise physical displacement and economic displacement by exploring feasible alternative project designs;
 - avoid forced eviction⁵⁹;
 - mitigate unavoidable adverse social and economic impacts from land acquisition on affected persons by: (i) providing timely compensation for loss of assets at full replacement cost⁶⁰; and (ii) ensuring that land acquisition and resettlement activities are implemented with meaningful consultation, participation, and disclosure of information, in accordance with the requirements of PR 10;
 - improve, or as a minimum restore the livelihoods and standards of living of affected persons compared to pre-displacement levels; and
 - improve living conditions of physically displaced persons through the provision of adequate housing with security of tenure⁶¹ at resettlement sites.

Scope of Application

5. The applicability of this PR is established during the environmental and social impact assessment process described in PR 1.
6. This PR applies to physical or economic displacement that can be full or partial, permanent or temporary, and resulting from the following types of transactions:
 - land rights⁶² and/or assets acquired through expropriation or other compulsory procedures;
 - land rights and/or assets acquired through negotiated settlements, if expropriation or other compulsory processes can be initiated in case negotiation fails;
 - restrictions that result in people experiencing loss of access to land, and assets or livelihoods and natural resources, irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase, or by means of government regulation;
 - relocation of people without formal, traditional, or recognizable usage rights under national laws, who are occupying or utilising land prior to the cut-off date; and
 - displacement of people as a result of project impacts that render their land or assets unusable or inaccessible.
7. This PR also applies to any physical displacement or economic displacement carried out by the client or a government for the purposes of the project before EBRD's involvement. Where

⁵⁹ "Forced eviction" refers to the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this PR.

⁶⁰ "Replacement cost" is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labour for construction of structures or other fixed assets, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost must at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety.

⁶¹ "Security of tenure" refers to resettled individuals or communities are resettled to a site that they can legally occupy, where they are protected from the risk of eviction and where the tenure rights provided to them are socially and culturally appropriate. In no event will resettled persons be provided tenure rights that are in effect weaker than the rights they had to the land or assets from which they have been displaced.

⁶² "Land rights" include full and permanent ownership rights recognised by the law of the country, whether registered or customary; permanent or temporary usufruct (usage) rights derived from a formal or informal agreement or from custom, including long- or short-term lease, tenancy and sharecropping, as well as formal or informal use of communally held natural resources such as forest, pasture, and water bodies; rights-of-way established by law or custom; and restrictions of use or access established by law or custom.

displacement has already occurred prior to the involvement of the Bank, an audit shall be conducted to identify: (i) any gaps of past activities against this PR; and (ii) the corrective actions that may be required to ensure compliance with this PR. A corrective action plan will describe all activities to reach compliance with this PR in the form of a time-bound plan, including a budget, implementation arrangements, allocation of roles and responsibilities, and implementation schedule.

8. This PR does not apply to:

- resettlement resulting from voluntary land transactions (market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory process if negotiations fail), and where such transactions affect only those with legally recognised rights. However, this PR will apply where such voluntary land transactions may result in the displacement of persons, other than the seller, who occupy, use or claim rights to the land in question such as informal tenants or other land users that have no right under national law; and
- the settlement of refugees, internally displaced persons, and victims of natural disasters, conflict, crime or violence.

Requirements

General

9. At an early stage of the environmental and social assessment process outlined in PR 1, the client shall identify if any physical and/or economic displacement is likely to be caused by the project and assess the likelihood of any future additional land and resource needs of the project.
10. Where there are displacement impacts, the assessment process shall characterise the baseline socio-economic circumstances of displaced persons and the potential risks and impacts of the project to them. The extent of the assessment shall be sufficient to characterise the potential significance, likelihood and severity of the impact and take into account the views of affected people and key relevant stakeholders.
11. Where the assessment has identified that the project may entail material risks and impacts associated to physical and economic displacement of people and/or communities, the client will engage resettlement expert(s) to assist in the preparation of a resettlement planning document, with an aim to develop and implement measures to address impacts on displaced people in accordance with the mitigation hierarchy. The nature of the resettlement planning document to be prepared by the client will be determined by the Bank at an early stage of the environmental and social assessment process. The scope and level of detail of the plan will be proportionate to the nature and scale of the project, its potential displacement impacts and the level of stakeholder interest.

Avoidance or Minimisation of Displacement

12. The client shall consider feasible alternative project designs to avoid or at least minimise physical and/or economic displacement. Avoidance is the preferred approach in accordance with the mitigation hierarchy in PR 1. It is especially important to avoid physical or economic displacement of those socially or economically vulnerable. However, avoidance may not be the preferred approach in situations where public health or safety would be adversely affected as a result. There may also be situations where resettlement can provide direct development opportunities for households or communities, including improved housing and public health conditions, strengthened security of tenure or other improvements to local living standards.

Avoidance of Forced Eviction

13. The client shall not resort to forced eviction. The exercise of eminent domain, expropriation, compulsory acquisition or similar powers by a client is not considered to be forced eviction providing it complies with the requirements of national law and the provisions of this PR and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).

Negotiated Settlements

14. The client will seek to acquire land rights through negotiated settlements even if they have the legal means to gain access to the land without the consent of the seller. Negotiated settlements help avoiding or minimising expropriation and administrative or judicial delays associated with formal expropriation, and to the extent possible to reduce the impacts on affected persons associated with formal expropriation. Negotiated settlements can usually be achieved by providing fair and appropriate compensation to affected persons or communities

Consideration of Vulnerable Groups:

15. The client shall identify, assess and address impacts on vulnerable groups in accordance with PR 1 and specifically:
 - (i) carry out, at the time of the socio-economic surveys, a vulnerability analysis to determine pertinent vulnerability criteria in the context of the project area, in cooperation with relevant stakeholders including affected communities;
 - (ii) identify vulnerable groups based on the results of this vulnerability analysis; and
 - (iii) plan assistance measures tailored to the different needs of vulnerable groups, describe these measures in the resettlement planning document, and provide for their implementation and funding as part of the overall land acquisition and resettlement budget.

Consideration of Gender Aspects

16. The process of physical displacement or economic displacement has specific gender dimensions that shall be considered throughout baseline surveys, impact assessment, mitigation and monitoring processes. Measures will be in place to ensure meaningful participation of women and men in any consultations about resettlement, including appropriate times of meetings, transport, childcare support, as well as convening women-only meetings when necessary. As part of socio-economic baseline, specific investigations shall be carried out to understand differential impacts of land acquisition and resettlement on men and women. This shall include the following:
 - (i) intra-household analysis to identify differences in men and women's sources of livelihoods, including informal ones;
 - (ii) analysis of women's rights over land and use thereof, including co-ownership and usage rights over communal lands and other assets; and
 - (iii) an analysis of the impact of the resettlement on women's ability to conduct work.
17. Compensation entitlement and delivery shall take account of gender issues, including (i) women's productive and household activities, (ii) fair modalities of cash compensation payment, and (iii) shares in resettlement property ownership. The client will consider offering alternative compensation methods and/or modalities, especially in countries and regions where women are less likely to have access to formal financial institutions and/or bank accounts. Under circumstances in which national law and tenure systems do not recognise the rights of women to hold or exchange property, provision will be made to ensure, to the extent possible, that women can gain security of tenure.

18. The consultation process shall ensure that women's perspectives are obtained and their interests factored into all aspects of resettlement planning and implementation. Women's and men's preferences in terms of compensation mechanisms, replacement land or alternative access to assets and natural resources rather than cash, will be explored and documented.
19. Assistance to livelihood improvement or restoration⁶³, such as improvement of existing agriculture activities, skills training, access to credit, entrepreneurship and job opportunities shall be made equally available to men and women and adapted to their respective needs.

Socio-economic Surveys

20. The client shall carry out socio-economic surveys to describe the baseline circumstances of affected people where the project may entail physical displacement or economic displacement. Such surveys will use a combination of quantitative and qualitative methods and will be designed to facilitate further social and economic monitoring of the circumstances of affected persons. Socio-economic baseline surveys shall:
 - establish a social and economic profile of the affected communities and people with a disaggregation of data by sex and age;
 - identify sources of livelihoods that are affected and their significance to the overall livelihoods of affected people;
 - identify land tenure regimes in the affected area;
 - identify any gender issues that may affect the land acquisition and resettlement process; and
 - identify relevant factors of vulnerability and establish a list of vulnerable groups.

Census, Inventory of Affected Assets and Cut-off Date

21. The client shall carry out a census of affected people to: (i) identify persons who are affected by the project; and (ii) determine who will be eligible for compensation and assistance. The census shall also take into account seasonal resource users who may not be present in the project area at the time of the census.
22. The client shall carry out (concurrently with the census and the cut-off date) an inventory⁶⁴ of affected assets, including land, structures, crops, communal amenities and natural resources to establish the basis for further valuation of such assets.
23. The client shall establish a cut-off date for eligibility⁶⁵ either: (i) as foreseen in applicable legislation; or (ii) using the end date of the census or of the inventory (whichever is the latest). The client shall inform affected persons of the cut-off date. Information regarding the cut-off date will be well documented and will be disseminated throughout the project area at regular intervals in written and non-written forms (as appropriate) and in relevant local languages. This will include posted warnings that persons settling in the project area after the cut-off date may be subject to removal. The client is not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date.
24. The cut-off date for eligibility shall be valid either: (i) for the period foreseen in national laws; or (ii) for a reasonable time period from the census or inventory date. Where a longer period elapses

⁶³ "Livelihood improvement or restoration" refers to specific allowances or activities meant to support affected persons in improving or at a minimum restoring their livelihoods compared to pre-displacement levels.

⁶⁴ "Inventory" should include a detailed account, derived through a consultative, impartial and transparent process, of the full range of rights held or asserted by affected people, including those based on custom or practice, secondary rights such as rights of access or use for livelihoods purposes, rights held in common, etc.

⁶⁵ "Eligibility" includes definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

between the cut-off date and compensation of the affected land by the client, the census, inventory and resulting valuation shall be updated.

Valuation of Affected Lands and Assets

25. Valuation shall be at full replacement cost and shall be performed by qualified valuers. The valuation methodology for determining replacement cost shall be documented and included in relevant resettlement planning documents. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period of time between calculation of compensation rates and delivery of compensation is extensive.

Eligibility Classification

26. Affected persons may be classified as follows:
- (i) persons who have formal legal rights to the land (including customary and traditional rights recognised under national laws) or assets;
 - (ii) persons who do not have formal legal rights to land or assets at the time of the census, but who have a claim to land or assets that is recognised or recognisable under national laws; or
 - (iii) persons who have no recognisable legal right or claim to the land or assets they occupy or use.

Compensation and Benefits for Affected Persons

27. Where land acquisition or restrictions on land use (whether permanent or temporary) cannot be avoided, the client will offer compensation⁶⁶ to affected persons at full replacement cost, and other assistance as may be necessary to help them improve or at least restore their standards of living or livelihoods, subject to the provisions in this PR.
28. The client will provide resettlement assistance⁶⁷ to all physically displaced persons and livelihood improvement or restoration assistance to economically displaced persons, regardless of the categories above. In addition, the client's obligations pertaining to compensation are as follows for each of the three categories described in paragraph 26:
- Category (i) Provide compensation (in-kind or in-cash) for their legally held property⁶⁸ at full replacement cost.
 - Category (ii) Provide legal support for affected persons to obtain recognition of their claim to land so that they can further be provided with compensation for their legally held property at full replacement cost, and cover the cost of this recognition process.
 - Category (iii) Provide compensation for any structures or developments on land (including crops and trees).
29. Compensation standards for categories of land and fixed assets will be disclosed and applied consistently. Compensation rates may be subject to upward adjustment where negotiation strategies are employed. In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.
30. Compensation will be provided before displacement or imposition of access restrictions on land or assets. Where repeated efforts to contact absentee owners have failed, where project-affected

⁶⁶ "Compensation" refers to payment in cash or in kind for loss of an immovable asset or a resource that is acquired or affected by the project.

⁶⁷ "Resettlement assistance" refers to technical and financial assistance provided to displaced people in addition to compensation to support their efforts in relocating to a new home and restoring their livelihoods.

⁶⁸ "Property" refers to a building, or a piece of land, or both together, including all fixed assets attached to the land such as trees and ancillary structures.

persons have rejected fair compensation offers, or where competing claims to the ownership of lands or assets are subject to lengthy legal proceedings, the client may deposit compensation funds provided by the resettlement plan into an interest-bearing account and proceed with project activities in accordance with national law. Compensation shall be made immediately available to eligible persons upon resolution of these issues.

31. Where livelihoods of displaced persons are land-based⁶⁹ or where land is collectively owned, the client shall offer land-based compensation, unless proven unfeasible or unacceptable to affected persons.
32. Payment of cash compensation for lost assets at full replacement cost in-lieu of in-kind compensation may be appropriate where: (i) livelihoods are not land-based; (ii) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (iii) active markets for land, housing and labour exist, displaced persons use such markets, and there is sufficient supply of land and housing.
33. In cases where affected persons reject compensation offers that meet the requirements of this PR and, as a result, expropriation or other legal procedures are initiated, the client shall explore opportunities to cooperate with the responsible government authority to obtain outcomes consistent with this PR, including compensation at full replacement cost, resettlement assistance and livelihood improvement or restoration assistance.
34. Where communities of indigenous peoples are affected, the client shall meet the applicable requirements of this PR as well as those of PR 7.

Voluntary Land Donations

35. In some circumstances, it may be proposed that part or all of the land to be used by the project is donated on a voluntary basis without payment of full compensation. Subject to prior Bank approval, this may be acceptable providing the client demonstrates that:
 - the potential donor or donors have been appropriately informed and consulted about the project and the choices available to them;
 - the potential donor or donors have confirmed their willingness in writing;
 - there is no coercion, intimidation or bribery is used;
 - the amount of land being donated will not reduce the donor's current livelihood levels; and the land donation entails no residual livelihood impact.
 - no household relocation is involved;
 - the donors are expected to benefit directly from the project;
 - for community or collective land, donation can only occur with the consent of individuals using or occupying the land; and
 - the client will maintain a transparent record of all consultations and agreements reached.

Loss of Community Facilities, Utilities, and Public Amenities

36. Where a project involves the loss of community facilities, utilities or public amenities, the client shall replace these to ensure a better or similar level of service, based on consultation with the affected community⁷⁰ and relevant government stakeholders to identify and agree upon suitable alternatives.

⁶⁹ "Land-based livelihood" refers to activities such as cropping and grazing of livestock as well as the harvesting of natural resources.

⁷⁰ "Affected community" refers to the community affected by the project as defined under PR 1 and whose members are experiencing physical or economic displacement. Affected communities include Host Communities.

Stakeholder Engagement

37. Meaningful consultation of affected persons and communities, including host communities⁷¹, shall be organised by the client throughout the process of resettlement planning and implementation in accordance with principles and processes outlined in PR 10, and shall be supported by disclosure of relevant information, as follows:
- disclosure of relevant information and meaningful consultation of affected persons and communities shall take place during the consideration of alternative project designs;
 - resettlement and livelihood improvement or restoration shall include options and alternatives from which affected persons and communities may choose;
 - meaningful consultation shall take place throughout the planning, implementation, monitoring, and evaluation of the land acquisition and resettlement process, including livelihood improvement or restoration;
 - additional provisions apply to consultations with displaced indigenous peoples, in accordance with PR 7;
 - consultation during the planning phase with all relevant affected groups and stakeholders, including men and women, and vulnerable groups shall be documented in the Resettlement Plan required by this PR; and
 - consultation during the implementation and monitoring phases shall be documented.
38. In devising consultation measures, the client shall ensure that all groups, including the vulnerable, are informed and aware of their entitlements, rights, opportunities and benefits.
39. The client shall support consultation and engagement efforts with simple, practical, accurate and culturally appropriate documentation meant for broad dissemination to affected persons.

Grievance Mechanism

40. The client shall establish an effective grievance mechanism as early as possible in the land acquisition and resettlement process, and at the latest prior to the census taking place in order to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely manner. The grievance mechanism shall be consistent with the objectives and principles pertaining to grievance management contained in PR 10. It shall include a recourse mechanism designed to resolve disputes in an impartial manner. The outcomes of the grievance mechanism (including numbers of grievances received, resolved and outstanding) shall be reflected in monitoring reports.

Planning and Implementation

41. To address the risks and impacts identified in the environmental and social assessment, the client shall prepare a plan proportionate to the risks and impacts associated with the project:
- (i) for projects with minor land acquisition or restrictions on land use, as a result of which there will be no significant impact to livelihoods, the plan will establish eligibility criteria for affected persons, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;
 - (ii) for projects causing physical displacement, the plan will set out the additional measures relevant to relocation of affected persons;
 - (iii) for projects involving economic displacement with significant impacts on livelihoods or income generation, the plan will set out the additional measures relating to livelihood improvement or restoration; and

⁷¹ "Host Communities" refers to communities in or around areas to which people physically displaced by a project will be resettled. The host population may, in turn, be affected by the resettlement.

- (iv) for projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the plan will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.
42. Depending on the stage of project development, either a resettlement plan (RP) or a resettlement framework (RF) will be prepared by the client:
- I. *Resettlement plan*: where the nature and magnitude of impacts associated to land acquisition can be determined at the time, a resettlement plan shall be submitted to the Bank. The plan shall be based on up-to-date and reliable information about: i) the proposed project and its potential impacts on the displaced persons and other adversely affected groups; ii) entitlement matrix which defines compensation entitlements (whether in-cash or in-kind) for each category of loss and each group of affected persons; iii) appropriate and feasible mitigation measures for all impacts identified; and iv) the legal and institutional arrangements required for effective implementation of resettlement measures.
 - II. *Resettlement framework*: where the nature or magnitude of impacts associated to land acquisition is unknown due to the project development stage and a detailed census of affected people and assets cannot be conducted for this reason. The purpose of the resettlement framework is to clarify resettlement principles, organisational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation. Once the project components are defined in sufficient detail, the resettlement framework will serve as a basis for the further development of a detailed resettlement plan proportionate to potential risks and impacts in accordance with the requirements of this PR.
43. Resettlement planning documents shall be integrated in the environmental and social management system required by PR 1. For Category A projects, they shall be submitted and disclosed as part of the ESIA required under PR 1 and according to the same review and engagement process and timeline. Where the magnitude of displacement impacts is significant, the Bank may require disclosure of resettlement planning documents for Category B projects. Confidential information pertaining to individuals and compensation budgets will be removed from resettlement planning documents meant for public disclosure.

Organisational capacity and commitment

44. The client shall apply the requirements of PR1 to land acquisition and resettlement activities as applicable, and specifically establish, maintain and strengthen, as necessary, an organisational structure that defines roles, responsibilities and authority to implement land acquisition and resettlement in accordance with this PR. The client shall designate specific personnel, including management representative(s), with a clear allocation of responsibility and authority to plan and implement land acquisition and resettlement activities. The client shall provide adequate support and human and financial resources on an on-going basis to achieve effective and continuous delivery of the commitments made in regards of land acquisition and resettlement.

Private sector projects with government-managed land acquisition and resettlement

45. Land acquisition and resettlement may involve responsibilities of the government even where the project is privately owned. In such cases, the client shall engage the responsible government agencies early in the project development process to explore ways and means to reach compliance with this PR, and will seek to play an active role in land acquisition and resettlement planning, implementation and monitoring, and will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with the objectives of this PR. In addition, where government capacity is limited, the client will support the government's efforts in regards of land acquisition and resettlement.

46. The client is responsible for identifying gaps between local legislation and government practice on the one hand and the requirements of this PR on the other (i.e. compensation rates, eligibility of informal occupiers, or consultation and disclosure). When gaps are identified, the client shall take responsibility for bridging these gaps in a manner that is acceptable to the government and the Bank.
47. The client shall prepare a resettlement plan or a resettlement framework to complement the documents prepared by the responsible government agency if required to meet the requirements of this PR. The client shall include in this plan: (i) a description of the entitlements of displaced persons provided under applicable laws and regulations; (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this PR; and (iii) the financial and implementation responsibilities of the government agency and/or the client in the execution of this plan.

Monitoring

48. The client shall establish procedures to monitor and evaluate the implementation of the Resettlement Plan and shall take corrective action if necessary during implementation to achieve the objectives of this PR. Monitoring of the land acquisition, resettlement and livelihood improvement or restoration process shall be carried out in accordance with PR 1 and will involve the participation of key stakeholders, including affected communities.
49. The extent of monitoring activities will be proportionate to the project's risks and impacts. For all projects with significant displacement impacts, the client will retain competent resettlement professionals to monitor the implementation of Resettlement Plans, design corrective actions as necessary, provide advice on compliance with this PR, and produce periodic internal monitoring reports. These monitoring reports shall include the progress against the key performance indicators specified in the Resettlement Plan and shall be submitted to the Bank as part of the periodic environmental and social monitoring reports required by PR 1.
50. Responsibilities for providing the Bank with monitoring reports remain with the client even where land acquisition and resettlement are implemented by a third party such as the government.
51. The client shall ensure that the implementation of the resettlement plan is verified through the submission and approval of the Land Acquisition and Resettlement Execution Report⁷² by the Bank upon completion of all activities.
52. Where the magnitude of displacement impacts is significant, the Bank can require one or both of the following in addition to internal monitoring:
 - periodic external compliance reviews⁷³ at a frequency and according to terms of reference to be determined in the resettlement plan and in agreement with the Bank; and/or
 - an external completion audit⁷⁴ of land acquisition and resettlement activities to determine that requirements in this PR and provisions in the resettlement plan have been met, particularly

⁷² “*Land Acquisition and Resettlement Execution Report*” refers to an internally prepared report submitted upon completion of land acquisition, resettlement and livelihood restoration activities, which includes: summary of project impacts (both physical and economic displacement) and resettlement plan principles; description of efforts to avoid and minimise displacement; summary of consultation events and outcomes, including how they influenced entitlements and other features of the land acquisition, resettlement, and livelihood restoration activities; description of the compensation delivery process; description of any issues encountered and how they were resolved; summary of grievances received and how they were resolved, including the list of any grievances and court cases pending at the date of submission of the report; description of resources mobilised to plan and implement land acquisition, resettlement, and livelihood restoration activities.

⁷³ “*External Compliance Review*” refers to periodic external review of land acquisition and resettlement activities undertaken during planning and implementation of these activities to determine whether requirements in this PR and provisions in the resettlement plan are being met. It will include recommendations in order to correct any observed gaps.

those pertaining to livelihood improvement or restoration. The resettlement plan shall specify the timing, scope, and success indicators of the completion audit. The completion audit shall be undertaken by competent resettlement professionals after livelihood improvement or restoration measures have been completed and their outcomes can be measured. The completion audit report may identify corrective actions should gaps be observed and result in a corrective action plan.

53. The client may be required to disclose external monitoring reports (including compliance review reports and the completion audit report) where the magnitude of displacement impacts is significant.

Physical Displacement and Resettlement Assistance

54. In cases where physical displacement cannot be avoided through design, the client will develop a plan that covers, at a minimum, the applicable requirements of this PR regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement and, as warranted, to identify development opportunities. It will include a resettlement budget and implementation schedule, and establish the entitlements of all categories of affected persons (including host communities). Particular attention will be paid to gender aspects and the needs of the vulnerable. The client will document all transactions to acquire land rights, provision of compensation and other assistance associated with relocation activities.
55. The client shall offer displaced persons a choice between a replacement property of equal or higher value with security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at replacement cost if it is demonstrated that replacement property options are not possible or not accepted by affected people. Replacement structures (including housing) and/or cash compensation shall be made available prior to relocation. Resettlement sites built for displaced persons shall offer adequate housing as a minimum, or living conditions at least equivalent to those before displacement, as well as sustainable and cost-effective opportunities to improve or at a minimum restore livelihoods. The cost of moving and re-establishing utilities in the new homes shall be borne by the client.
56. The client shall inform physically displaced people of the timing of the physical move with reasonable notice and after consultation, taking consideration of potential impacts on agricultural and schooling calendars, amongst other factors.
57. The client shall identify and assess potential adverse impacts on host communities that could be affected by the resettlement process. Any mitigation measures agreed with the host communities will be included in the Resettlement Plan.
58. Where the development of resettlement sites and the reconstruction of affected housing and other affected structures are undertaken by the client, all Performance Requirements are applicable.
59. The client shall provide resettlement assistance suited to the needs of each group of affected persons, with particular attention paid to the needs of vulnerable groups.

Economic Displacement and Livelihood Improvement or Restoration

60. In the case of projects affecting livelihoods or income generation, the client shall plan measures to improve, or at least restore, affected persons' incomes or livelihoods. The plan shall establish the entitlements of affected persons and/or communities, paying particular attention to gender aspects

⁷⁴ "Completion Audit" refers to an external audit of land acquisition and resettlement activities undertaken after the activities defined in the resettlement plan have been completed to determine whether requirements in this PR and provisions in the resettlement plan have been met, particularly those pertaining to livelihood improvement or restoration.

and the needs of vulnerable groups, and shall ensure that these are provided in a transparent, consistent, and equitable manner. The plan shall incorporate arrangements to monitor the effectiveness of livelihood measures during implementation, as well as evaluation once implementation is completed. The mitigation of economic displacement shall be considered complete when the completion audit concludes that affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to restore their livelihoods.

61. Impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions shall be identified as part of the environmental and social impact assessment process in accordance with PR 1 requirements. Compensation and livelihood restoration measures for such impacts shall be undertaken in accordance with the principles of this PR.
62. Depending on the type of impacts, livelihood improvement or restoration measures will include the following:
 - where land acquisition affects businesses⁷⁵, compensation of the affected business owner or operator for: (i) the cost of re-establishing activities elsewhere; (ii) lost net income during the transition period⁷⁶; and (iii) the costs of the transfer and reinstallation of the plant, machinery or other equipment, as applicable;
 - in cases where the project affects persons with legal rights to land that are recognised or recognisable under national law, the provision of replacement land or property of equal or greater value or, if appropriate, cash compensation at replacement cost;
 - economically displaced persons who are without legally recognisable claims to land will be compensated for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at replacement cost. Additionally, the client will provide assistance in lieu of land compensation sufficient to provide such persons with an opportunity to re-establish livelihoods elsewhere;
 - where communally used natural resources are affected, initiatives that enhance the productivity of the remaining resources to which the community has access, and in-kind or cash compensation for loss of access or provision of access to alternative sources of the lost resource;
 - provision of additional targeted assistance and opportunities at least to restore, or where possible improve, their income-earning capacity, production levels and standards of living. In the case of businesses experiencing temporary losses or having to close as a result of project-related displacement, both the owner of the business and employees losing pay or employment are eligible for such assistance;
 - provision of support during the transition period to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels and standards of living; and
 - provision to displaced persons and communities of opportunities to derive appropriate development benefits from the project.

⁷⁵ “*Businesses*” includes shops, restaurants, services, manufacturing facilities and other enterprises, regardless of size and whether licensed or unlicensed.

⁷⁶ “*Transition Period*” refers to the period in between the occurrence of the displacement and the time when affected livelihoods are restored.

EBRD Performance Requirement 6:

Biodiversity Conservation and Sustainable Management of Living Natural Resources

Introduction

1. This Performance Requirement (PR) recognises that the conservation of biodiversity⁷⁷ and sustainable management of living natural resources⁷⁸ are fundamental to environmental and social sustainability.
2. This PR recognises the importance of maintaining the core ecological function of habitats⁷⁹, ecosystem services⁸⁰, and the biodiversity they support.

Objectives

3. The objectives of this PR are to:
 - protect and conserve biodiversity using a precautionary approach;
 - adopt the mitigation hierarchy in the design and implementation of projects with the aim of achieving no net loss, and where appropriate, a net gain of biodiversity;
 - maintain ecosystem services; and
 - promote good international practice (GIP) in the sustainable management and use of living natural resources.

Scope of Application

4. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed and managed through the project life-cycle. The implementation of the actions necessary to meet the requirements of this PR will be managed under the client's overall environmental and social management system (ESMS) and project specific environmental and social management plans (ESMPs) to structure the project to meet this PR within an acceptable timeframe. The environmental and social assessment and management requirements are provided in PR 1.
5. This PR also applies to situations where livelihood of affected communities, including of indigenous peoples whose access to, or use of, biodiversity, ecosystem services and/or living natural resources may be affected by project activities. The potential positive role of project affected communities, including indigenous peoples, in biodiversity conservation and sustainable management of living natural resources is also considered in this PR.

⁷⁷ For the purpose of this PR, biodiversity is defined in accordance with the Convention on Biological Diversity as the “variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species and of ecosystems”.

⁷⁸ “Living natural resources” are defined as being “the plants and animals cultivated for human or animal consumption and use, whether in the wild or in a cultivated situation. It includes all types of forestry, biofuels, agriculture, including both annual and perennial crops and animal husbandry, including livestock; and both wild and capture fisheries including all types of marine and freshwater organisms, both vertebrate and invertebrate”.

⁷⁹ Habitats is defined as a terrestrial, freshwater or marine geographic unit or airway that supports assemblages of living organisms and their interactions with the non-living environment.

⁸⁰ Ecosystem services are the benefits that people, including businesses, derive from ecosystems. Ecosystem services are organized into four types: (i) provisioning services, which are the products people obtain from ecosystems; (ii) regulating services, which are the benefits people obtain from the regulation of ecosystem processes; (iii) cultural services, which are the non-material benefits people obtain from ecosystems; and (iv) supporting services, which are the natural processes that maintain the other services.

Requirements

A. *Biodiversity Conservation*

Assessment of Risks and Impacts

6. The assessment process will characterise the baseline conditions to a degree that is proportional and specific to the anticipated risk and significance of impacts. The baseline assessment will consider, but will not be limited to relevant risks to biodiversity and ecosystem services, focussing on potential habitat loss, degradation and fragmentation, invasive alien species, overexploitation, migratory corridors, hydrological changes, nutrient loading, and pollution, as well as impacts relevant to climate change and adaptation. In planning and carrying out biodiversity related baseline and impact assessments, the client will refer to relevant good practice guidance, utilising desktop review, consultation with experts and field-based approaches as required. Where further investigations are needed to provide greater certainty of the significance of potential impacts, the client will carry out additional studies and/or monitoring before undertaking project-related activities that could cause irreversible impacts.
7. Through the assessment process, the client will identify and characterise, early in the project lifecycle, the potential project-related opportunities, risks and impacts on biodiversity. The extent of the assessment will be sufficient to characterise the impacts, based on their likelihood and the significance and severity of impact, and reflect the concerns of potentially affected communities and, where relevant, other stakeholders. The assessment will also consider direct, indirect and cumulative impacts and evaluate the effectiveness and feasibility of the mitigation measures to be applied to the project. The assessment process will include consideration of potential landscape level impacts, seasonal constraints and/or sensitivities, as well as impacts on the ecological integrity of these ecosystems, independent of their protection status and regardless of the degree of their disturbance or degradation.
8. The assessment will consider the use of, and dependence on, ecosystem services by potentially affected communities and/or indigenous peoples. The assessment will also consider the project's dependence on these ecosystem services. Where the project has the potential to impact ecosystem services, and where the client has direct management control or significant influence, adverse impacts should be avoided. When avoidance of impacts is not possible, measures to minimise impacts and/or restore biodiversity and ecosystem services will be implemented.
9. For projects that could potentially have such impacts on indigenous peoples and local communities, the client will provide opportunities for fair and equitable sharing of the benefits derived from the utilisation of living natural resources in accordance with: (i) the requirements for addressing economic displacement impacts in PR 5; (ii) the specific requirements relating to managing potential risks and impacts on indigenous peoples in PR 7; and (iii) the stakeholder engagement requirements provided in PR 10.

The protection and conservation of biodiversity, priority biodiversity features and critical habitats

10. Where the assessment has identified potential project related impacts to biodiversity, the client will manage its risks in accordance with the mitigation hierarchy and GIP. The client will adopt a precautionary approach and apply adaptive management practices in which the implementation of mitigation and management measures are responsive to changing conditions and the results of project monitoring throughout the project lifecycle.

11. Notwithstanding the above, some areas affected by the project may contain “priority biodiversity features”⁸¹ which include: (i) threatened habitats; (ii) vulnerable species; (iii) significant biodiversity features identified by a broad set of stakeholders or governments; and (iv) ecological structure and functions needed to maintain the viability of priority biodiversity features described in this paragraph.
12. Where the assessment has identified that the project could have significant, adverse and irreversible impacts to priority biodiversity features, the client shall not implement any project related activities unless:
 - there are no technically and economically feasible alternatives;
 - the overall benefits outweigh the project impacts on biodiversity;
 - stakeholders are consulted in accordance with PR10;
 - the project is permitted under applicable environmental laws, recognising the priority biodiversity features; and
 - appropriate mitigation measures are put in place, in accordance with the mitigation hierarchy, to ensure no net loss⁸² and preferably a net gain of priority biodiversity features and the habitats and ecological functions that support them over the long term to achieve measurable conservation outcomes⁸³.
13. The most sensitive biodiversity features are defined as critical habitat; which comprise one of the following: (i) highly threatened or unique ecosystems; (ii) habitats of significant importance to endangered⁸⁴ or critically endangered species; (iii) habitats of significant importance to endemic or geographically restricted species; (iv) habitats supporting globally significant migratory or congregatory species; or (v) areas associated with key evolutionary processes.
14. Critical habitat shall not be further fragmented, converted or degraded to the extent that its ecological integrity or biodiversity importance is compromised. Consequently, in areas of critical habitat, the client will not implement any project activities unless the following conditions are met:
 - no other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value;
 - stakeholders are consulted in accordance with PR10;
 - the project is permitted under applicable environmental laws, recognising the priority biodiversity features;
 - the project does not lead to measurable adverse impacts⁸⁵ on those biodiversity features for which the critical habitat was designated as outlined in paragraph 13;
 - the project is designed to deliver net gains⁸⁶ for critical habitat impacted by the project;

⁸¹ Priority biodiversity features are a sub-set of biodiversity that is irreplaceable or vulnerable, but at a lower priority level than critical habitats (as defined in paragraph 13).

⁸² ‘No net loss’ is defined as the point at which project-related biodiversity losses are balanced by gains resulting from measures taken to avoid and minimize these impacts, to undertake on-site restoration and finally to offset significant residual impacts, if any, on an appropriate geographic scale.

⁸³ As a last resort, where any significant residual impacts remain, the client may need to consider the use of compensatory measures, such as biodiversity offsets.

⁸⁴ As listed on the International Union for the Conservation of Nature (IUCN) Red List of Threatened Species. The determination of critical habitat based on other listings is as follows: (i) If the species is listed nationally / regionally as critically endangered or endangered, in countries that have adhered to IUCN guidance, the critical habitat determination will be made on a project by project basis in consultation with competent professionals; and (ii) in instances where nationally or regionally listed species’ categorizations do not correspond exactly to those of the IUCN (*e.g.*, some countries more generally list species as “protected” or “restricted”), an assessment will be conducted to determine the rationale and purpose of the listing. In this case, the critical habitat determination will be based on such assessment.

⁸⁵ Measurable adverse impacts mean the project’s direct and indirect impacts will not jeopardise the persistence within the study area of any biodiversity value that triggers a critical habitat designation.

⁸⁶ Net gains are additional conservation outcomes that can be achieved for the biodiversity values for which the critical habitat was designated. Net gains may be achieved through the development of a biodiversity offset and/or, in instances where the client could meet the requirements of paragraph 14 of this Performance Requirement without a biodiversity offset, the client

- the project is not anticipated to lead to a net reduction in the population⁸⁷ of any endangered or critically endangered species, over a reasonable time period;⁸⁸ and
 - a robust and appropriately designed, long-term biodiversity monitoring and evaluation program aimed at assessing the status of critical habitat is integrated into the client’s adaptive management program.
15. In such cases where a client is able to meet these requirements, the project’s mitigation strategy will be described in a biodiversity management plan or biodiversity action plan⁸⁹, wherever appropriate.
 16. The requirement for a critical habitat assessment will be identified during the project’s impact assessment scoping phase and, where relevant, be revised at the conclusion of the baseline assessment. Where the assessment has identified that the project could have adverse impacts on a critical habitat, the client will retain independent experts to conduct the assessment of the potential adverse impacts on this critical habitat.
 17. Biodiversity offsets will be designed and implemented to achieve measurable, additional, and long-term conservation outcomes⁹⁰ that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity. The design of a biodiversity offset will adhere to the “like-for-like or better” principle⁹¹ and be carried out in alignment with GIP. The client will need to demonstrate the long-term technical and financial feasibility of undertaking the offset.
 18. In instances where biodiversity offsets are proposed for priority biodiversity features or critical habitat, the client will develop a biodiversity offset strategy or biodiversity offset management plan, as appropriate to demonstrate that the project’s significant residual impacts on biodiversity will be adequately mitigated. In these instances, the client will retain independent experts with knowledge in biodiversity offset design and implementation.
 19. Not all residual adverse impacts to priority biodiversity features and/or critical habitat can be offset. In such cases, the client shall redesign the project to avoid the need for such offset, and to meet the requirements of this PR.

should achieve net gains through the implementation of programs that could be implemented in situ (on-the-ground) to enhance habitat, and protect and conserve biodiversity.

⁸⁷ Net reduction is a singular or cumulative loss of individuals that impacts on the species’ ability to persist at the global and/or regional/national scales for many generations or over a long period of time. The scale (i.e., global and/or regional/national) of the potential net reduction is determined based on the species’ listing on either the (global) IUCN Red List of Threatened Species and/or on regional/national lists. For species listed on both the (global) IUCN Red List of Threatened Species and the national/regional lists, the net reduction will be based on the national/regional population.

⁸⁸ The timeframe in which clients shall demonstrate “no net reduction” of critically endangered and endangered species will be determined on a case-by-case basis and in consultation with external experts.

⁸⁹ Biodiversity action plans (BAP) typically include a series of goals, objectives, and management measures and scheduled milestones to mitigate residual impacts to achieve no net loss/net gains of priority biodiversity features or critical habitat. The goal/objectives should be realistic and based on measurable targets. Each objective should outline a series of actions and include completion indicators or monitoring targets, and the responsible party and a timeframe. BAPs should be developed in consultation with relevant stakeholders, including government, external experts, local/international conservation organizations and project affected communities.

⁹⁰ Measurable conservation outcomes for biodiversity will be demonstrated *in situ* (in natural conditions, not in captivity or depository) and on an appropriate geographic scale (e.g., at the local, national or regional level).

⁹¹ The principle of “like-for-like or better” means that in most cases biodiversity offsets should be designed to conserve the same biodiversity values that are being affected by the project (an “in kind” offset). In certain situations, however, areas of biodiversity to be affected by the project may be neither a national nor a local priority, and there may be other areas of biodiversity with like values that are a higher priority for conservation and sustainable use and under imminent threat or in need of protection or effective management. In these situations, it may be appropriate to consider an “out-of-kind” offset that involves “trading up” (i.e., where the offset targets biodiversity of higher priority than that affected by the project).

Legally Protected and Internationally Recognised Areas of Biodiversity Value

20. Where the project occurs within or has the potential to adversely affect an area that is protected through legal or other effective means⁹², and/or is internationally recognised⁹³, or proposed for such status by national governments, the client shall identify and assess potential project-related impacts and apply the mitigation hierarchy so that impacts from the project will not compromise the integrity, conservation objectives and/or biodiversity importance of such an area.
21. If the assessment identifies that the project has the potential to adversely impact the conservation objectives and integrity of the site, priority biodiversity features and/or critical habitat within the legally protected areas or internationally recognised areas of biodiversity value, the client will seek to avoid such impacts. In addition the client will:
 - demonstrate that any proposed development is legally permitted, which may have entailed that a specific assessment of the project related impacts on the protected area has been carried out as required under national law;
 - act in a manner consistent with any government recognised management plans for such areas;
 - consult protected area managers, relevant authorities, local communities and other stakeholders on the proposed project in accordance with PR 10; and
 - implement additional programmes, as appropriate, to promote and enhance the conservation objectives of the protected area.

Invasive Alien Species

22. The client shall avoid and proactively prevent accidental or deliberate introduction of alien species that could have significant adverse impacts on biodiversity, specifically:
 - the client will not intentionally introduce alien species into areas where they are not normally found unless this is carried out in accordance with the regulatory framework governing such introduction. Under no circumstances shall species known to be invasive be introduced into new environments;
 - the client will identify potential risks, impacts and mitigation options related to the accidental transfer and release of alien species;⁹⁴ and
 - where alien species are already established in the country or region of the proposed project, the client will exercise diligence in not spreading the invasive species into areas in which they have not already been established.

B. Sustainable Management of Living Natural Resources

23. Projects that involve the primary production of living natural resources, including crop or livestock production, natural or plantation forestry, aquaculture or fisheries, production and use of biomass for energy and biofuels will comply with all applicable requirements of this PR, in addition to the following:
 - The client will manage living natural resources through the application of national regulatory requirements, GIP and relevant EU substantive environmental standards, as applicable at the project level.

⁹² This PR is guided by the IUCN definition of 'Protected Area'.

⁹³ Sites identified under international conventions or agreements, including, but not limited to, UNESCO Natural World Heritage Sites, UNESCO Man-and-Biosphere Reserves and the Ramsar List of Wetlands of International Importance .

⁹⁴ With respect to the international shipping of goods and services, this PR is guided by the International Convention for the Control and Management of Ship's Ballast Water and Sediments (BWM). Clients seeking EBRD finance for a project involving such shipping activities are expected to comply with appropriate obligations developed in the framework of this convention.

- Where appropriate, the client will adopt globally, regionally or nationally recognised certification standards that (i) are founded on a multi-stakeholder consultative process and (ii) where accreditation is subject to independent verification or certification through appropriate accredited bodies for such standards. In the absence of relevant standards and/or certification systems, the client will commit to applying appropriate industry-specific sustainable management practices in accordance with GIP.
- Where feasible, the client will locate land-based agribusiness projects on unforested land or land that has already been converted from its natural state to minimise impacts to priority biodiversity features and/or critical habitat.
- Production and/or use of species with potential for invasiveness will not be used without adequate controls to prevent their release/spread outside of the production area.
- For fishery⁹⁵ or aquaculture projects, the client will assess and minimise the risk of escape of non-native species into the aquatic environment. The client will also assess and minimise the potential for transfer of disease and or parasites into the environment.
- Where the client is involved in the farming, transport and slaughtering of animals for meat or by-products (e.g. milk, eggs, wool), the client will adopt and implement national regulatory requirements, relevant EU animal welfare standards and GIP, whichever is most stringent, in animal husbandry techniques.
- To minimise Antimicrobial Resistance (AMR)⁹⁶, the client will only use antibiotics on healthy food producing animals in accordance with EU substantive environmental standards.
- In EU member states, Genetically Modified Organisms (GMOs) may not be used or released to the environment without approval being given by the competent authorities. In other EBRD countries of operation, GMOs may not be used or released to the environment without a risk assessment, conducted in accordance with EU substantive environmental standards.

C. Supply Chains

24. As part of the supply chain assessment process outlined in PR 1, the client will identify and assess the risks and impacts to biodiversity caused by its primary supply chains of goods and materials which are central to the core functions of the project.
25. If this risk assessment identifies that priority biodiversity features and/or critical habitat could be adversely impacted by the client's primary supply chains of goods and materials which are central to the core functions of the project, or where risks are salient and widely known to be present in lower tiers of the core supply chain, the client will take appropriate steps to remedy this in accordance GIP.
26. Where the client is purchasing natural resource commodities, including food, timber and fibre that are known to originate from areas where there is a risk of significant conversion or degradation of priority biodiversity features and/or critical habitats, the client's environmental and social assessment will include an assessment of the systems and verification practices used by the primary suppliers.⁹⁷ The clients will also give preference to purchasing living natural resources that are produced in accordance with internationally recognised principles and standards of sustainable management, where available for the product being purchased.

⁹⁵ Fishery activities are not necessarily limited to harvesting. Re-population or introduction of different species or populations, especially in closed environments such as lakes, shall ensure that the new stock does not destroy or displace existing local endemic/natural fish species.

⁹⁶ According to the WHO, AMR occurs when microorganisms such as bacteria, viruses, fungi and parasites change in ways that render the medications used to cure the infections they cause ineffective. AMR is the broader term for resistance in different types of microorganisms and encompasses resistance to antibacterial, antiviral, antiparasitic and antifungal drugs.

⁹⁷ Primary suppliers are those suppliers who, on an ongoing basis, provide directly to the project goods or materials essential for the core functions of the project. Core functions of a project constitute those production and/or service processes essential for a specific project activity without which the project cannot continue.

27. At a minimum, the client will establish policies, procedures and verification practices which will:
- identify the origin of the supply and habitat type of the source area;
 - avoid procurement from suppliers that are contributing to significant conversion or degradation of priority biodiversity features or critical habitats; and
 - provide for an ongoing review of the client's primary supply chains.
28. The ability of the client to fully address these risks will depend upon the client's level of control or influence over its primary suppliers.

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EBRD Performance Requirement 7:

Indigenous Peoples

Introduction

1. This Performance Requirement (PR) recognises that indigenous peoples are social groups with identities and livelihoods that are distinct from dominant groups in national societies. They may be among the most marginalised and vulnerable segments of the population. Their economic, social and legal status may limit their capacity to defend their rights to and interest in lands and resources (both natural and cultural), making them particularly susceptible to projects with the potential to affect these rights and interests. This PR also acknowledges that indigenous peoples have unique knowledge and abilities and are potential partners in sustainable development both contributing to and benefiting from the planning and implementation of project-related activities.
2. This PR outlines the responsibilities of the client to assess the potential for a project to impact indigenous peoples, to meaningfully engage with affected indigenous peoples and, under certain circumstances, to obtain their free, prior and informed consent (FPIC). This PR also lays out client obligations to collaborate with affected indigenous peoples in the planning and implementation of measures to avoid, minimise, mitigate and compensate for adverse effects; and share project benefits.

Objectives

3. The objectives of this PR are to:
 - ensure that projects fully respect the dignity, human rights, aspirations, cultures, customary laws and livelihoods of indigenous peoples;
 - both anticipate and avoid adverse risks and impacts⁹⁸ of projects on the lives and livelihoods of indigenous peoples' communities, or when avoidance is not feasible, to minimise, mitigate, or compensate for such impacts;
 - enable indigenous peoples to benefit from projects in a culturally appropriate manner;
 - establish and maintain an ongoing relationship with the indigenous peoples affected by a project throughout its lifecycle;
 - ensure the effective participation of indigenous peoples in the design of project activities or mitigation measures that could potentially affect them either positively or negatively; and
 - ensure good faith negotiation with Indigenous Peoples and obtain their FPIC in the specific circumstances described in this PR.

Scope of Application

4. In this PR, the term “indigenous peoples” is used in a technical sense to refer to a social and cultural group, distinct from dominant groups within national societies, possessing all of the following characteristics in varying degrees:
 - self-identification as members of a distinct indigenous ethnic or cultural group and recognition of this identity by others;
 - collective attachment to geographically distinct habitats, traditional lands or ancestral territories in the project area and to the natural resources in these habitats and territories;⁹⁹

⁹⁸ Adverse impacts may include but not be limited to impacts occurring as a result of the loss of assets or resources, restriction on land use, or carrying out traditional lifestyle activities, resulting from project activities.

⁹⁹ A group that has lost “collective attachment to geographically distinct habitats or ancestral territories in the project area” because of forced severance remains eligible for coverage under this PR, if expected to be affected by the project. “Forced severance” refers to loss of collective attachment to geographically distinct habitats or ancestral territories because of conflict, government resettlement programs, dispossession from their lands, natural disasters, or incorporation of such territories into an

- customary cultural, economic, social, or political institutions that are separate from those of the dominant society or culture; and
 - a distinct language or dialect, often different from the official language or dialect of the country or region.
5. The fact that a group, or members of a group, lead a nomadic or transhumant way of life, live in mixed or urban communities and/or only visit their traditional lands on a seasonal basis, having experienced forced severance, is no *prima facie* bar to the application of this PR.
 6. Implementation of the actions necessary to meet these requirements is to be managed in accordance with this PR, and PRs 1, 5, 8 and 10 as applicable.

Requirements

Assessment

7. The client will establish the applicability of this PR as early as possible in the project lifecycle but no later than during the environmental and social assessment process. Where the appropriate resource is not available within the client's organisation, the advice of experienced and independent social specialists will be sought to ascertain whether a particular group meets the criteria in paragraphs 4 to 6 of this PR.
8. In projects where indigenous peoples are likely to be affected, the client will carry out an assessment of impacts on indigenous peoples. The client will first avoid adverse effects and where this is not feasible, prepare an indigenous peoples' development plan (IPDP) so as to minimise and/or mitigate any potential adverse impacts and identify benefits.
9. In cases where the project has not yet commenced, the client will commission an objective and independent study identifying all communities of indigenous peoples who may be directly or indirectly affected, the potential effects of the project on these groups and their views regarding the project. This assessment will consider the specific vulnerability of indigenous communities to changes in their environment and way of life.
10. In cases where construction, project-related activities or operations have already commenced, the client will provide all relevant information and documents (including those regarding the client's past performance and effects to date on indigenous peoples) together with a record of documents already submitted to the authorities, to demonstrate that the client has sought and acted upon the opinions of project-affected indigenous peoples.
11. If these requirements have not been satisfied, the client will carry out an assessment as outlined in paragraphs 7 to 10 of this PR. This assessment will also: (i) review the effects to date on the lives and livelihoods of indigenous peoples; (ii) identify any gaps with the requirements of this standard; and (ii) identify the corrective actions that may be required to ensure that the intended outcomes of this PR are achieved. An action plan will then be agreed.

urban area. For purposes of this PR, "urban area" normally refers to a city or a large town, and takes into account all of the following characteristics, no single one of which is definitive: (a) the legal designation of the area as urban under domestic law; (b) high population density; and (c) high proportion of non-agricultural economic activities relative to agricultural activities.

Meaningful Consultation and FPIC

Meaningful Consultation

12. The client will establish an ongoing relationship with the affected communities of indigenous peoples from as early as possible in the project planning process and undertake a process of meaningful engagement, as defined in PR 10, commensurate with the risks and potential impacts on indigenous peoples. In addition, the engagement process will include the following:
 - involvement of indigenous peoples' representative bodies (for example, councils of elders or village councils, among others), indigenous peoples' organisations as well as individually affected indigenous persons;
 - understanding and respect for any relevant customary laws;
 - provision of sufficient time for indigenous peoples' collective decision-making processes;
 - the effective participation of indigenous peoples in the design of project activities or mitigation measures that could potentially affect them either positively or negatively; and
 - recognition of community heterogeneity, taking into account the following:
 - indigenous peoples may live in mixed communities with non-indigenous peoples;
 - Indigenous communities are multi-vocal; consultations and participation must be inclusive of gender, generational, and excluded groups.

FPIC

13. There is no universally accepted definition of FPIC; however, for the purpose of this PR, consent refers to the collective support of affected indigenous peoples for the proposed project activities that affect them. FPIC builds on and expands the process of meaningful consultation defined in PR 10 and above and is established through good-faith negotiations between the client and affected indigenous peoples, at the conclusion of which the latter arrive at a decision, in accordance with their cultural traditions, customs and practices. FPIC does not require unanimity and may be achieved even when individuals or groups within or among indigenous peoples explicitly disagree.
14. FPIC of affected Indigenous People is required in circumstances where a project: (i) affects their customary lands or resources; (ii) relocates them from their traditional or customary lands; or (iii) affects or proposes to use their cultural resources.
15. In these circumstances, the client will retain qualified independent social scientists to assist in conducting and documenting the good faith negotiations and FPIC process.

Impacts to Customary Lands and Resources

16. Indigenous peoples are often closely tied to their customary lands and its forests, water, wildlife, and other natural resources, and therefore special considerations apply if the project affects such ties. While, under national law, these lands may not be under legal ownership, use of these lands, including seasonal or cyclical use, by communities of indigenous peoples for their livelihoods, or cultural, ceremonial, or spiritual purposes that define their identity and community, can often be substantiated and documented.
17. If the client proposes to locate the project on, or commercially develop natural resources located within, customary lands under use, and adverse impacts can be expected on the livelihoods, cultural, ceremonial, or spiritual uses that define the identity and community of the indigenous peoples, the client will obtain their FPIC. Further to this, the client will:
 - document the indigenous peoples' land and resource use by experts in collaboration with the affected communities of indigenous peoples without prejudicing any other indigenous peoples' land claim, The assessment will be gender inclusive and specifically consider women's roles in the management and use of these resources;

- document its efforts to avoid or at least minimise the size of land used, occupied and/or owned by indigenous peoples which is proposed for the project;
- inform the affected communities of Indigenous People of their rights with respect to these lands under national laws, including any national law recognising customary rights or use;
- give adequate time to the affected indigenous communities to reach an internal agreement, without the client imposing its will directly or indirectly;
- use functions such as an ombudsman and/or other such public institution within the relevant national system to facilitate community consent to the project and/or the proposed land use by the client and the mitigation package; and
- offer affected communities of indigenous peoples, at the minimum, fair compensation and due process in the case of commercial development of their land under national laws, together with culturally appropriate development opportunities including:
 - providing land-based compensation or compensation in kind in lieu of cash compensation where feasible;
 - providing, subject to the consent of the indigenous peoples, compensation in the form of collective ownership rights to the land and natural resources, unless prohibited by law;
 - in the case of collective ownership rights, ensuring fair and equitable sharing of benefits among the individual members of the affected group;
 - ensuring continued access to natural resources, ensuring the equivalent replacement of resources, or, as a final option, providing compensation; and
 - providing affected communities of indigenous peoples with access, usage and transit on land the client is developing subject to overriding health, safety and security considerations.

Relocation of Indigenous Peoples from Traditional or Customary Lands

18. The client will explore feasible alternative project designs to avoid the relocation of indigenous peoples from their communally held traditional or customary lands. When relocation is unavoidable, the client will minimise the size of land used and not carry out such relocation without obtaining the FPIC of affected indigenous peoples. Any relocation of indigenous peoples will be consistent with the requirements of PR 5. In addition, indigenous peoples will be entitled to receive fair and equitable compensation from the client for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged as a result of the project without their FPIC.
19. Where feasible, the relocated indigenous peoples should be able to return to their traditional or customary lands, should the reason for their relocation cease to exist, and the land should be fully reinstated.

Cultural Heritage

20. Where a project may significantly impact cultural heritage that is material to the identity and/or cultural, ceremonial or spiritual aspects of indigenous peoples, priority will be given to avoidance of such impacts. Where significant impacts are unavoidable, the client will obtain the FPIC of affected indigenous peoples.
21. Where a project proposes to use the cultural resources, knowledge, innovations, or practices of indigenous peoples for commercial purposes, the client will inform the indigenous peoples of: (i) their rights under national and public international law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will not proceed with such commercialisation unless it: (i) enters into a good faith negotiation with the affected communities of Indigenous People; (ii) documents their informed participation and their FPIC to such an activity; and (iii) provides for fair and equitable sharing of benefits from commercialisation of such knowledge, innovation, or practice, consistent with their customs and traditions.

Grievance Mechanism

22. The client will ensure that the grievance mechanism established for the project, as described in PR 10 is culturally appropriate and accessible for indigenous peoples and takes into account the availability of judicial recourse and customary dispute-settlement mechanisms. This may entail less reliance on written procedures and more use of verbal reporting channels.

Compensation and Benefit-Sharing

23. The client will ensure, in agreement with the local community, that affected indigenous peoples are compensated directly for any loss of livelihood incurred as a result of project-related activities. Compensation will be available both for adverse effects on customary livelihoods¹⁰⁰ and for negative impacts on wage or profit-dependent economic initiatives. When calculating compensation, the client will adequately take into consideration the adverse social effects of the project on the traditional lifestyles and family life of indigenous peoples with specific consideration of women's wage and non-wage subsistence activities. This will be undertaken in cooperation with indigenous peoples' representatives and experts. The provisions of this paragraph also apply in cases where the client has to pay compensation to local or regional government bodies.
24. The client will provide affected indigenous peoples opportunities for culturally appropriate development benefits. Such opportunities should be commensurate with the degree of project impacts, with the aim of improving their standard of living and livelihoods in an appropriate manner and of fostering the long-term sustainability of the natural resources on which they may depend. Development benefits will be provided in a timely manner.
25. The client's proposed actions to minimise mitigate and compensate for adverse effects and to identify and share benefits will be contained in a time-bound plan, such as an IPDP, or a broader community development plan with separate components for indigenous peoples. The client will retain qualified social scientists with relevant and appropriate technical expertise to prepare the IPDP. The IPDP will systematically assess differentiated impacts of a project with respect to gender and different generations, and will include actions to address these impacts on the different groups in the community. The level of detail and the scope of an IPDP will vary according to the specific project and nature and scope of the project activities
26. Mutually acceptable and legally feasible mechanisms for transferring the compensation and/or resources will be developed. These may be provided on a collective basis where the land and resources are collectively owned. Assistance will be facilitated by the client so as to enable the establishment of appropriate management and governance systems that ensure effective distribution of compensation to all eligible members, or collective use of compensation in a manner that benefits all members of the group.
27. Where implicit factors exist that exclude indigenous peoples and individuals from the benefits, such as employment opportunities, on ethnic grounds, the project activities will include such corrective measures as: (i) informing indigenous peoples' organisations and individuals of their rights under labour, social, financial, and business legislation and of the recourse mechanisms available; (ii) appropriate and effective information dissemination, training, and measures to eliminate barriers to benefits and resources such as credit, employment, business services, health services and education services, and other benefits generated or facilitated by the project; and (iii) granting to indigenous workers, entrepreneurs, and beneficiaries, the same protection afforded under national laws to other individuals in similar sectors and categories, taking into account gender issues and ethnic segmentation in goods and labour markets, as well as linguistic factors.

¹⁰⁰ The nature of "customary livelihoods" is to be interpreted flexibly (so as to include contemporary adaptations such as ethno-tourism and food processing).

Other Considerations

28. During project implementation, the client will bring to the immediate attention of EBRD any conflicts between indigenous peoples and the client that remain unresolved despite having gone through the project grievance mechanism.
29. Where the government has a defined role in the management of risks and impacts on indigenous peoples in relation to the project, the client will collaborate with the responsible government agency, to the extent feasible and permitted by the agency, to achieve outcomes that are consistent with the objectives of this Performance Requirement. In addition, where government capacity is limited, the client will play an active role during planning, implementation, and monitoring of activities to the extent permitted by the agency.

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EBRD Performance Requirement 8:

Cultural Heritage

Introduction

1. This Performance Requirement (PR) recognises the importance of cultural heritage for present and future generations. The aim is to protect cultural heritage and to guide clients to avoid or mitigate adverse impacts on cultural heritage in the course of their business operations. The clients are expected to be precautionary in their approach to the management and sustainable use of cultural heritage.
2. Both tangible and intangible cultural heritage are important assets for economic and social development, and are an integral part of the continuity of cultural identity and practices (including traditional skills, knowledge, beliefs and/or minor dialects and languages).
3. In pursuing these aims of protection and conservation, this PR is guided by applicable international conventions and other instruments. It also recognises the need for all parties to respect the laws and regulations that pertain to cultural heritage that could be affected by a project and the obligations under relevant international treaties and agreements ratified by host countries. These laws may be on cultural heritage or antiquities, planning or building consent, conservation areas, protected areas, and other laws and regulations governing the built historic environment, or laws relating to the protection of cultures of indigenous peoples. Detailed requirements for protecting indigenous peoples are in PR 7.

Objectives

4. The objectives of this PR are to:
 - support the protection and conservation of cultural heritage;
 - adopt the mitigation hierarchy approach to protecting cultural heritage from adverse impacts arising from the project;
 - promote the equitable sharing of benefits from the use of cultural heritage in business activities; and
 - where significant elements of cultural heritage are identified, promote the awareness, appreciation and enhancement of cultural heritage as well as potential socioeconomic benefits for local communities.

Scope of Application

5. This PR applies to all projects directly financed by the EBRD as established in the Environmental and Social Policy. The client will, as part of its environmental and social assessment process, identify the relevant requirements of this PR, and how they will be addressed as an integral part of the client's overall environmental and social management system (ESMS) and/or the project's environmental and social management plan (ESMP). The environmental and social assessment and management requirements are provided in PR 1. In addition, the client will apply this PR during project implementation if the project affects, or has the potential to affect, cultural heritage (tangible and intangible) which had not been previously identified.
6. For the purposes of this PR, the term cultural heritage is defined as a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their evolving values, beliefs, knowledge and traditions. It encompasses tangible (physical) and intangible cultural heritage, which is recognised at the local, regional, or national level, or within the international community:

- physical cultural heritage refers to movable or immovable objects, sites, groups of structures as well as cultural or sacred spaces associated therewith, and natural features and landscapes that have archaeological, paleontological, historical, architectural, religious, aesthetic or other cultural significance; and
 - intangible cultural heritage refers to practices, representations, expressions, knowledge and skills that communities, groups and, in some cases, individuals recognise as part of their cultural heritage and which are transmitted from generation to generation.
7. Recognising that sites, objects or cultural traditions representing cultural heritage value or significance could be directly or indirectly affected during project development, a project is subject to the provisions of this PR if it:
 - involves significant excavations, demolitions, movement of earth, drainage, flooding or other changes in the physical environment;
 - is located in, or in the vicinity of, a cultural heritage site recognised by the country of operation; and/or
 - may have an adverse impact on the intangible forms of cultural heritage of people including indigenous peoples.
 8. The requirements of this PR are applicable to cultural heritage irrespective of whether or not it has been legally protected or previously disturbed. With regards to intangible cultural heritage, the requirements of this PR apply only if the physical component of the project will have a material impact on such cultural heritage or if the project intends to use such cultural heritage for commercial purposes.

Requirements

Consultation with Affected People, Communities, and Other Stakeholders

9. The client will carry out meaningful consultation and information provision in respect of the project with all key stakeholders with the view of: (a) identifying cultural heritage likely to be affected; (b) understanding the significance of cultural heritage to stakeholders, including local communities; (c) assessing the impacts and risks; (d) applying mitigation hierarchy; and (e) identifying opportunities for potential community benefit. The identification of stakeholders and the conduct of meaningful consultation will follow the requirements of PR 10 and will include custodians and key users of the identified cultural heritage. This shall include women and vulnerable groups with respect to intangible cultural heritage.
10. The client, through consultations with key affected people, communities, and other stakeholders, will determine whether disclosure of information related to cultural heritage may compromise safety or integrity of cultural heritage. In such situations, the client will keep the information related to the cultural heritage confidential and may omit the sensitive information from public disclosure.

Assessment of Risks and Impacts

11. At an early stage of the environmental and social assessment, the client will identify if any cultural heritage is likely to be adversely affected by the project, and assess the likelihood of any chance finds. In doing so, the client will consult with relevant authorities, experts, local communities and other stakeholders as appropriate.
12. The assessment process will characterise the baseline and the potential risks and impacts of the project on cultural heritage. The extent of the assessment will be sufficient to characterise the potential significance, likelihood and severity of the impact and take into account the views of key relevant stakeholders. The client will develop and implement mitigation measures to address

impacts on cultural heritage in accordance with the mitigation hierarchy and good international practice. Where the assessment has identified that the project may have material risks and impacts on cultural heritage, the client will engage cultural heritage expert(s) to assist in the preparation of a cultural heritage management plan, as appropriate.

13. The client will apply internationally recognized practices for field surveys, documentation and protection of cultural heritage related to the project and ensure the application of such practices to contractors and other third parties.

Chance Finds Procedure

14. The client will ensure that provisions for managing chance finds, defined as physical cultural heritage encountered unexpectedly during project implementation, are in place and included into contracts, as appropriate. Such provisions will include notification of relevant competent bodies of found objects or sites; delivering training to the project personnel, including contractor and sub-contractor employees, on the procedures to follow in case chance finds are discovered; and securing the area of finds to avoid any further disturbance or destruction. The client will not disturb any chance finds until an assessment by a cultural heritage expert(s) is made and actions consistent with national laws and this PR are identified.

Legally Protected and Internationally Recognised Areas

15. Where the project has the potential to have adverse impacts on the cultural heritage in an area that is protected through legal or other effective means, and/or is internationally recognised, or proposed for such status by national governments, the client will seek to avoid such impacts. In situations where impacts cannot be avoided and no other alternatives are feasible, the client will proceed with the project development only when the following requirements are implemented:
 - meet the local, national, and international requirements pertinent to the cultural heritage concerned;
 - demonstrate that any proposed development is legally permitted, which may require that an assessment of the project related impacts on the protected area has been carried out;
 - comply with the provisions of the government management plans for such areas through the preparation and implementation of the cultural heritage assessment and associated management plan;
 - consult protected area managers, relevant authorities, local communities and other stakeholders on the proposed project in accordance with PR 10; and
 - explore opportunities and implement programs to promote the conservation mandate of the protected area and contribute to the socioeconomic development of local communities in accordance with the management plan of the protected area.

Project's Use of Cultural Heritage

16. Where a project will entail the use of cultural resources, knowledge, innovations, or practices of local communities embodying traditional lifestyles for commercial purposes, the client will inform these communities on a timely basis of: (i) their rights under national law; (ii) the scope and nature of the proposed commercial development; and (iii) the potential consequences of such development. The client will proceed with such commercialisation only when it: (i) enters into a good faith negotiation with the affected local communities embodying traditional lifestyles; (ii) documents their informed participation and the successful outcome of the negotiation; and (iii) provides affected local communities with fair and equitable sharing of benefits from commercialisation of such knowledge, innovation, or practice, consistent with their customs and traditions. Where a project proposes to use the cultural resources, knowledge, innovations or practices of indigenous peoples, the requirements of PR 7 will apply.

17. The client will take measures to guard against theft and illegal trafficking of movable cultural heritage items affected by the project and will notify the relevant of authorities of any such activity.

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EBRD Performance Requirement 9:

Financial Intermediaries

Introduction

1. This Performance Requirement (PR) recognises that financial intermediaries (FIs) are a key instrument for promoting sustainable financial markets and provide a vehicle to channel funding to the micro, small and medium-sized enterprise sector. FIs include a variety of financial service providers including, *inter alia*, private equity funds, banks, leasing companies, insurance companies and pension funds.
2. The nature of intermediated financing means that the FIs will assume delegated responsibility for environmental and social assessment, risk management and monitoring as well as overall portfolio management. The nature of delegation may take various forms depending upon a number of factors, such as the type of finance provided. The effectiveness of the FIs environmental and social risk management will be evaluated and monitored on a continuous basis throughout the project life-cycle.

Objectives

3. The objectives of this PR are to:
 - set out how FIs will assess and manage environmental and social risks and impacts associated with the sub-projects they finance;
 - promote good environmental and social management practices in the sub-projects financed by FIs; and
 - promote good environmental and sound human resources management within FIs.

Scope of Application

4. For the purposes of this PR, the term “sub-project” refers to the projects eligible to be financed by the FIs utilising the funds provided by the Bank under an FI project.
5. The requirements of this PR will be applicable to all sub-projects.
6. When funds provided by EBRD involve equity finance, which cannot be traced to specific sub-projects, the requirements of this PR will apply to all of the FI future business activities.
7. The FI will not need to apply any environmental and social risk management procedures to the sub-projects that are likely to have minimal, or no, adverse environmental or social risks.
8. An FI may be required to adopt and implement additional or alternative environmental and social requirements, depending on the nature of the FI, its business activities, its portfolio, the sub-projects, and the country of operation.

Requirements

Organisational Capacity within the FI

9. The FI will maintain human resources policies, management systems and practices in accordance with PR 2 (Labour and Working Conditions) and will comply with the relevant occupational health and safety requirements of PR 4 (Health, Safety and Security). These will be communicated to the FI workers.

10. The FI will designate one or more representatives, of the FI's senior management to have overall responsibility for environmental, health, safety and social matters, including the implementation of this PR, PR 2 and the relevant occupational health and safety requirements of PR 4. The responsible senior management representative(s) will need to (i) designate members of staff to be responsible for day-to-day implementation of the environmental and social requirements and provide implementation support; (ii) identify environmental and social training needs and required budget; and, (iii) ensure that adequate technical expertise, either in-house or external, is available to carry out assessments and manage sub-projects with potentially significant adverse environmental or social risks and impacts.
11. The FI will put in place a clearly defined environmental and social management system (ESMS) including an environmental and social policy and environmental and social procedures commensurate with the nature of the FI, and the level of environmental and social risks associated with sub-projects.
12. Where the FI can demonstrate that it already has an ESMS in place, it will provide adequate documented evidence of the ESMS.
13. The environmental and social procedures will include risk assessment and monitoring mechanisms, as appropriate, to:
 - screen all clients/sub-projects against the EBRD's Environmental and Social Exclusion List included as Appendix 1 to the Environmental and Social Policy and the FI Referral List included as Appendix 1 to this PR;
 - categorise the environmental and social risk of proposed sub-projects (low/medium/high) in accordance with EBRD's Environmental and Social Risk Categorisation List for FIs;
 - ensure, through its assessment, that sub-projects are structured to meet national regulatory requirements relating to environmental and social matters, including, where necessary, requiring clients to implement corrective action plans;
 - keep and regularly update environmental and social records on sub-projects; and
 - monitor sub-projects to ensure compliance with national laws on environment, health and safety and labour.
14. Where an FI is financing sub-projects that meet the criteria in the indicative list of Category A projects included as Appendix 2 to the EBRD Environmental and Social Policy, such sub-projects will be required to meet PRs 1 to 8 and 10.
15. The FI Referral List, included as Appendix 1 to this PR, lists a number of business activities with particularly high environmental and social risks. Where a credit line or financing facility sub-project involves activities listed in Appendix 1 to this PR, the FI will refer that sub-project to the Bank.

Stakeholder Engagement

16. The FI will put in place a system for dealing with external communication on environmental and social matters. The FI will respond to such enquiries and concerns in a timely manner. FIs are also encouraged to publish their corporate environmental and social policy or a summary of their ESMS on their website, if available. FIs will list on their website the link to any publicly available environmental and social impact assessment (ESIA) reports for Category A sub-projects which they finance.

Reporting to EBRD

17. The FI will submit to EBRD annual environmental and social reports on the implementation of its ESMS, this PR, PR 2, the relevant occupational health and safety requirements of PR 4, as well as the environmental and social performance of its portfolio of sub-projects.

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Appendix 1

The FI Referral List

The financing by FIs of the following environmentally or socially sensitive business activities financed with EBRD funds is subject to referral to EBRD:

The principal Performance Requirement that proposed transactions will be expected to meet is indicated in italics.

- (i) Activities involving involuntary resettlement - *EBRD Performance Requirement 5*
- (ii) Activities that occur within or have the potential to adversely affect an area that is protected through legal or other effective means, and/or is internationally recognised, or proposed for such status by national governments, sites of scientific interest, habitats of rare/endangered species, fisheries of economic importance, and primary/old growth forests of ecological significance - *EBRD Performance Requirement 6*
- (iii) Activities within, adjacent to, or upstream of land occupied by indigenous peoples and/or vulnerable groups including lands and watercourses used for subsistence activities such as livestock grazing, hunting, or fishing - *EBRD Performance Requirement 7*
- (iv) Activities which may affect adversely sites of cultural or archaeological significance - *EBRD Performance Requirement 8*
- (v) Activities in the nuclear fuel production cycle (uranium mining, production, enrichment, storage or transport of nuclear fuels)¹⁰¹
- (vi) Energy generation using nuclear fuels (excluding electricity import/export)¹⁰²
- (vii) Activities involving the release of GMOs into the natural environment – *EBRD Performance Requirement 6*
- (viii) Any micro, small or medium-sized HPPs that do not trigger Category A requirements – *EBRD Eligibility Criteria for Small Hydropower Plant Projects*
- (ix) Any Category A projects included as Appendix 2 to the EBRD Environmental and Social Policy

¹⁰¹ In compliance with the EBRD's Energy Policy, the Bank is permitted to use its funding (directly or indirectly through FIs) in relation to nuclear safety improvements, or for the safe and secure management of radioactive waste and spent nuclear fuel, as well as for decommissioning, without a direct link to the closure of high risk reactors. Any other activities in the nuclear fuel production cycle are excluded from FI financing.

¹⁰² *Id.*

EBRD Performance Requirement 10:

Information Disclosure and Stakeholder Engagement

Introduction

1. This Performance Requirement (PR) recognises the importance of an open and transparent engagement between the client, its workers, worker representatives, local communities affected by the project and, where appropriate, other project stakeholders as an essential element of good international practice (GIP) and corporate citizenship. Such engagement is also a way of improving the environmental, social and overall sustainability of projects. In particular, effective community engagement, appropriate to the nature and scale of the project, promotes sound and sustainable environmental and social performance, and can lead to improved financial, social and environmental outcomes, together with enhanced community benefits.
2. Stakeholder engagement is central to building strong, constructive, and responsive relationships which are essential for the successful management of a project's environmental and social risks and impacts. It is an inclusive and on-going process which is most effective when initiated at an early stage of the project and is an integral part of the assessment, management and monitoring of environmental and social risks and impacts of the project.

Objectives

3. The objectives of this PR are to:
 - outline a systematic approach to stakeholder engagement that will help the client build and maintain a constructive relationship with their stakeholders;
 - provide means for effective and inclusive engagement with project affected parties throughout the project cycle;
 - ensure that appropriate environmental and social information is disclosed and meaningful consultation is held with the project's stakeholders; and
 - ensure that grievances from affected parties and other stakeholders are responded to and managed appropriately.

Scope of Application

4. This PR applies to all projects that are likely to have adverse environmental or social risks and impacts.
5. The client will identify and engage with stakeholders as an integral part of the project's environmental and social assessment process, environmental and social management systems (ESMS) and the environmental and social management plan (ESMP) as outlined in PR1. This PR shall also be read in conjunction with the requirements in PR2 regarding engagement with workers and with PR4 regarding engagement on emergency preparedness and response. In the case of projects involving involuntary resettlement or economic displacement, affecting indigenous peoples or having an adverse impact on cultural heritage, the client will also apply the special disclosure and consultation requirements as foreseen in PR 5, PR 7 and PR 8.

Requirements

6. Stakeholder engagement will involve the following elements: stakeholder identification and analysis, stakeholder engagement planning, disclosure of information, meaningful consultation, implementation of a grievance mechanism, and ongoing reporting to relevant stakeholders.

7. The client will conduct stakeholder engagement on the basis of providing stakeholders with access to timely, relevant, understandable and accessible information, in a culturally appropriate manner and free from manipulation, interference, coercion, and intimidation.
8. Stakeholder engagement will begin as early as possible in the project development and will continue throughout the project life cycle. The nature and frequency of stakeholder engagement at all phases of the project development will be proportionate to the nature and scale of the project, its potential adverse environmental or social risks and impacts and the level of stakeholder interest. The client will comply with the applicable requirements of national law with respect to public information and consultation, including those laws implementing host country obligations under public international law.
9. The client will define clear roles, responsibilities, and authority as well as designate specific personnel for the implementation and monitoring of stakeholder engagement activities.

Engagement during project preparation

Stakeholder Identification

10. The client will identify and document stakeholders, defined as the various individuals or groups who: (i) are affected or likely to be affected (directly or indirectly) by the project (affected parties), or (ii) may have an interest in the project (other interested parties).
11. The client will identify those project-affected parties (individuals or groups) who, because of their particular circumstances, may be disadvantaged or vulnerable. Based on this identification, the client will further identify individuals or groups who may have different concerns and priorities about project impacts, mitigation mechanisms and benefits, and who may require different, or separate, forms of engagement. An adequate level of detail will be included in the stakeholder identification and analysis so as to determine the level of communication that is appropriate for the project.

Stakeholder Engagement Plan

12. For projects that are likely to have adverse environmental or social risks and impacts, the client will develop and implement a stakeholder engagement plan (SEP) or an equivalent documented process, proportionate to the nature and scale or the risks, impacts and development stage of the project. For any project that requires an environmental and social impact assessment (ESIA), the SEP will apply the disclosure and consultation requirements for Category A projects outlined in paragraphs 22 to 26 of this PR.
13. The SEP will describe how engagement with identified stakeholders will be carried out throughout the project life cycle, including the timing and methods of engagement, the information to be disclosed, disclosure language(s) and the type of information to be sought from stakeholders. The SEP will be tailored to take into account the main characteristics and interests of the project affected parties and other interested parties and distinguish between the different levels of engagement that might be appropriate for each. The level of detail needed will be determined on a case-by-case basis. Resources available for stakeholder engagement will be outlined within the SEP.
14. When the stakeholder engagement depends substantially on community representatives,¹⁰³ the client will make reasonable efforts to verify that such persons do, in fact, represent the views of affected communities and that they are facilitating the communication process by communicating

¹⁰³ For example, community and religious leaders, local government representatives, civil society representatives, politicians, teachers, and/or others representing from one or more affected stakeholder groups.

the information to their constituents and conveying their comments to the client or authorities, as appropriate.

15. Where stakeholder engagement is the responsibility of the relevant governmental authorities, the client will collaborate with the responsible government authority to the extent permitted to achieve outcomes that are consistent with this PR. Where there are gaps between the local regulatory requirements and this PR, the client will identify engagement activities to supplement the formal regulatory process, and where appropriate, commit to supplemental actions.
16. In cases where the exact location of the project is not known, the SEP will be in the form of a framework approach as part of the client's overall ESMS, outlining general principles and a strategy to identify stakeholders and plan for an engagement process in accordance with this PR that will be implemented once the location is known.
17. Clients with multi-site operations and projects involving general corporate finance, working capital or equity financing will adopt and implement a corporate SEP. The corporate SEP will be commensurate to the nature of the client's business and its associated environmental or social risks and impacts, and the level of stakeholder interest. The SEP will be rolled out to facilities in a timely manner. It will include procedures and resources to ensure that adequate stakeholder engagement is conducted at the facility level, and that stakeholders proximal to its facilities receive information on the relevant facility's environmental and social performance and grievance mechanism.

Information Disclosure

18. The client will disclose relevant project information to help stakeholders understand the risks, impacts and opportunities of the project. The client will provide stakeholders with access to the following information:
 - the purpose, nature, scale and duration of the project;
 - risks to, and potential impacts on, stakeholders and proposed mitigation plans highlighting potential risks and impacts that might disproportionately affect vulnerable and disadvantaged groups and differentiate measures to mitigate these;
 - the envisaged stakeholder engagement process, if any, and opportunities and ways in which stakeholders can participate;
 - the time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarised, and reported; and
 - the process by which any grievances will be managed.

This information will be disclosed in the local language(s) and in a manner that is accessible and culturally appropriate, taking into account any specific needs of groups that may be differentially or disproportionately affected by the project or groups of the population with specific information needs.

Meaningful Consultation

19. The client will undertake meaningful consultation, based on the nature and scale of the project's adverse risks and impacts and the level of stakeholder interest. If the client has already engaged in such a process, they will provide adequate documented evidence of such engagement.
20. Meaningful consultation is a two-way process that:
 - will begin early in the project planning process to gather initial views on the project proposal and inform project design;

- encourages stakeholder feedback, particularly as a way of informing project development and engagement by stakeholders in the identification and mitigation of environmental and social risks and impacts;
 - continues on an ongoing basis;
 - is based on the prior disclosure and dissemination of relevant, transparent, objective and easily accessible information in a timeframe that enables consultations with stakeholders;
 - is undertaken in a culturally appropriate format, in relevant local language(s), is understandable to stakeholders and takes into consideration stakeholders' decision making processes;
 - considers and responds to feedback;
 - supports active and inclusive engagement with project-affected parties including disadvantaged or vulnerable groups;
 - is free from external manipulation, interference, coercion, discrimination, and intimidation; and
 - is documented by the client.
21. The client will inform those who have participated in the public consultation process in a timely manner of the final decision on the project, associated environmental and social mitigation measures, any benefits of the project for the local communities, reasons and considerations on which the decision is based. This information will include a summary of the feedback received and a brief explanation of how it was taken into account or the reasons why it was not and the grievance mechanism available.

Disclosure and Consultation on Category A Projects

22. Category A projects will require the client to carry out a formalised, participatory disclosure and consultation process which will be built into each stage of the ESIA process on a case-by-case basis. This process involves organised and iterative consultation leading to the client's incorporating into their decision-making process the views of the affected parties on matters that affect them directly.
23. The client will engage in a scoping process with interested parties and identified stakeholders at an early stage of the ESIA process to ensure identification of key risks and impacts to be assessed as part of the ESIA. As part of the scoping process, stakeholders will be able to provide comments and recommendations on a draft SEP and other scoping documents.
24. In addition to the ESIA and SEP, the client will disclose the project environmental and social action plan (ESAP) and a non-technical summary (NTS)¹⁰⁴. Applicable management plans shall be disclosed as specified in the Performance Requirements and as agreed with the Bank.
25. The consultation and disclosure process shall meet any applicable requirements under national environmental impact assessment laws and other relevant laws. The client will keep the ESIA in the public domain throughout the life of the project, but it may be amended, from time to time, with additional information, or archived following project completion, as long as it is timely available upon request.
26. The client is required to provide regular reports on environmental and social performance to interested stakeholders. These reports will be in a form accessible to the affected parties as a separate publication, posted online, or as detailed in the SEP. These reports will be disclosed at least annually, proportionally to the concerns of the relevant stakeholders.

¹⁰⁴ EBRD [Public Information Policy/ Access to Information Policy] provides that the Bank disclose ESIA's for Category A projects 60 calendar days prior to consideration of the project by the Board of Directors for private sector projects and 120 calendar days prior to Board consideration for public sector projects.

Engagement during project implementation and external reporting

27. Throughout the life of the project, the client will provide information to identified stakeholders, on an ongoing basis. The frequency, method and information to be provided will be appropriate to the nature of the project and its adverse environmental and social risks and impacts, the interested party and the level of interest. This may range from the provision of real time data to annual environmental and social performance reports. Additional information disclosure or consultation may be needed at key stages in the project cycle and on any specific issues that the disclosure and consultation process or grievance mechanism has identified as of concern to the stakeholders.
28. Where appropriate, the client will also seek feedback from affected parties on the effectiveness of the impact mitigation measures. For projects with potentially significant risks to or adverse impacts on affected communities, and in accordance with the level of stakeholder interest, the client may engage community members or other relevant stakeholders to participate in environmental and social monitoring activities outlined in PR1.

Grievance Mechanism

29. The client will need to be aware of and respond to stakeholders' concerns related to the project in a timely manner. For this purpose, the client will establish an effective grievance mechanism as early as possible in the project development process, to receive and facilitate resolution of stakeholders' concerns and grievances, in particular, about the client's environmental and social performance. The grievance mechanism will be proportionate to the risks and potential adverse impacts of the project:
 - the grievance mechanism will address concerns promptly and effectively, in a transparent manner that is culturally appropriate and readily accessible to all affected parties, at no cost and without retribution. The mechanism will not prevent access to judicial or administrative remedies. The client will inform the stakeholders about the grievance mechanism in the course of its engagement activities, and report regularly to the public on its implementation, protecting the privacy of affected individuals;
 - handling of grievances will be done in a culturally appropriate manner and be discreet, objective, sensitive, and responsive to the stakeholders' needs and concerns. The mechanism will also allow for anonymous complaints to be raised and addressed;
 - the client will consider the provision of mediation in resolution of grievances in projects where there are significant community concerns; and
 - monitoring of the implementation of the grievance mechanism and analysis of trends will be undertaken regularly.

Material Changes

30. The SEP shall include provisions for stakeholder engagement if there are changes to the project, at any stage of the project life cycle, which result in material changes to the environmental or social risks and impacts. The client will disclose to stakeholders how these are being mitigated and if there are significant adverse risks and impacts on affected parties, the client may be required to carry out additional consultation.